

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



March 20, 2002

# Mon 7b

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE  
ELLEN LIRLEY, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE**

**SUBJECT: REVISED FINDINGS FOR CERTIFICATION OF CITY OF SAN DIEGO  
MAJOR LCP AMENDMENT No. 2-2001-C (Sea World Master Plan) TO THE  
CITY OF SAN DIEGO LOCAL COASTAL PROGRAM (For Public Hearing and  
Final Commission Action at the Meeting of April 9-12, 2002)**

---

## SYNOPSIS

### SUMMARY OF COMMISSION ACTION

At the Commission meeting of February 7, 2002, the Commission reviewed the City of San Diego LCP Amendment #2-2001-C pertaining to the incorporation of the SeaWorld Master Plan Update into the Mission Bay Park LUP segment of the City's LCP. The request includes several amendments to the certified Mission Bay Park Master Plan addressing issues of building height, and incorporating the Sea World Master Plan Update as a component of the LUP. The SeaWorld Master Plan Update proposes redevelopment/expansion of SeaWorld over the next several years under a tiered program. Components of the plan address development criteria, design guidelines and the Tier 1 developments detailed below. In its action, the Commission denied as submitted, then approved the land use plan with extensive suggested modifications that address public views and the impacts of fireworks, remove specific height allocations for new development, address parking requirements and transit opportunities over time, improve shoreline access both within and outside the leasehold, and provide for enhanced public recreational opportunities.

In response to the City's stated concerns regarding Suggested Modifications #3, 4, 10 and 11, and SeaWorld's suggested revisions to Suggested Modifications #7 and 35, the Commission staff made a number of revisions to the staff recommendation at the hearing. These include deleting Suggested Modification #4 in its entirety; replacing some staff-recommended language with different language requiring the City's commitment to develop a Capital Improvements Project (CIP) for public improvements at South Shores and on Fiesta Island within two years of effective certification -- this change appears in Suggested Modifications #3, #10 and #11; adding language to Suggested Modification #7 to require payment of traffic mitigation funds; and changing Suggested Modification #35

to allow a \$5.00 discount on admissions rather than requiring implementation of a mandatory tram service.

The Commission also made some changes at the hearing, in the form of amendments to the main motion. The approved amendments added a Consumer Price Index (CPI) factor to Suggested Modification #7, which addresses circulation improvements, along with requiring that the traffic mitigation funds be paid incrementally beginning upon effective certification; and changes to Suggested Modification #25, addressing fireworks, to increase monitoring during the first year of a five-year monitoring program and to add another test site at the mouth of the Mission Bay Channel.

As a guide to the location of changes in this document, please note changes occurred to Suggested Modifications #3 (page 6), #7 (page 8), #10 (page 9), #11 (page 10), #25 (page 18) and #35 (page 22). In addition, #4 was deleted in its entirety. The first finding for approval, Public Access and Recreation (beginning on page 38), was significantly re-written and should be read in its entirety. The Visual Resources finding only has changes in the second full paragraph on page 44, addressing relocation of the splashdown ride. Changes to the Water Quality finding are in the second full paragraph on page 46, addressing fireworks. Within Traffic/Circulation/Parking, changes are found in the paragraph beginning at the bottom of page 50 and the first full paragraph on page 51, addressing the changes in Suggested Modifications #7 and #35.

### **COMMISSION VOTES**

City of San Diego LCPA 2-2001- C, approve if modified:

Commissioners Voting “Yes”: Dettloff, Kruer, McCoy, Woolley, Reilly, and Hart

Commissioners Voting “No”: Allgood, Orr and Chairperson Wan

### **Summary of Amendment Request**

LCP Amendment 2-2001-C is a request by the City of San Diego to amend the City’s certified Local Coastal Program (Land Use Plan) to incorporate the SeaWorld Master Plan Update into the Mission Bay Park LUP segment of the City’s LCP. The request includes several amendments to the certified Mission Bay Park Master Plan incorporating the height exemption approved by the voters in 11/98, exempting SeaWorld from the City’s 30-foot height limit in the coastal zone, and incorporating the Sea World Master Plan Update as a component of the LUP. The SeaWorld Master Plan Update itself proposes redevelopment and expansion of SeaWorld over the next several years under a tiered program. Components of the plan address development criteria, design guidelines and five Tier 1 developments: a splashdown ride proposed partially within the adjacent 16.5 acre leasehold expansion area, an educational facility, major front gate renovations, parking lot improvements in the expansion area and on- and off-site access improvements for pedestrians and bicyclists. The plan also delineates eight sites for Tier 2 development, but propose no specific improvements at this time. Finally, the plan identifies three special projects: expansion of the marina, construction of a hotel and

construction of a multi-story parking garage/transit center, that are not expected to occur for many years.

The appropriate resolution and motion begin on page 5. The suggested modifications begin on page 6. The findings for denial of the Land Use Plan Amendment as submitted begin on page 23. The findings for approval of the Land Use Plan Amendment if modified begin on page 38.

### **BACKGROUND**

The City's first IP was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code and a few PDOs; this replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. While it is newly in operation, the City is reviewing this plan on a quarterly basis, and is expecting to make a number of adjustments to facilitate implementation; most of these will require Commission review and certification through the LCP amendment process.

### **ADDITIONAL INFORMATION**

Further information on the revised findings for the City of San Diego LCP amendment No. 2-2001-C may be obtained from Ellen Lirley, Coastal Planner, at (619) 767-2370.

---

## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part. The earliest LUP approval occurred in May 1979, with others occurring in 1988, in concert with the implementation plan. The final segment, Mission Bay Park, was certified in November 1996.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code, and associated documents, as the City's IP, replacing the original IP adopted in 1988.

### **B. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

#### **Section 30512**

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

### **C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment was distributed to all known interested parties prior to the February 7, 2002 hearing, and notice of the hearing on revised findings is being distributed to all who participated in the February hearing, either by speaking at the hearing or submitting written comments.

### **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

1. **MOTION:**     *I move that the Commission adopt the revised findings in support of the Commission's action on February 7, 2002 concerning City of San Diego LCP Amendment No. 2-2001-C*

### **STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 7, 2002 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

### **RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for City of San Diego LCP Amendment No. 2-2001-C on the ground that the findings support the Commission's decision made on February 7, 2002 and accurately reflect the reasons for it.

### **PART III. SUGGESTED MODIFICATIONS**

The following suggested revisions to the proposed Land Use Plan were adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

**Modifications to the Mission Bay Park Master Plan:**

1. On Page 16 of the Mission Bay Park Master Plan Update, Executive Summary, the following modification shall be made to the City's proposed new language (for the purposes of this suggested modification, the single underlined sections represent the City's amendment to the Mission Bay Park Master Plan Update and the double underlined sections represent the Commission' suggested modifications):

In order to allow greater flexibility in designing new facilities within the SeaWorld leasehold, the City of San Diego's Coastal Zone Height Limit Overlay Zone was amended by public vote in November, 1998. The zoning code amendment allows potential development to a maximum height of 160 feet within the SeaWorld property. However, specific criteria governing the location, height, scale, massing and visual impacts of all SeaWorld development shall be governed by the Coastal Act and the Sea World Master Plan, which is incorporated by reference into the Mission Bay Park Master Plan and LCP Land Use Plan. All potential development shall require a coastal development permit issued in accordance with Coastal Act requirements.

2. On Page 26 of Appendix G, Design Guidelines of the Mission Bay Park Master Plan Update, revise the City proposed language to Item 27 as follows (for the purposes of this suggested modification, the single underlined sections represent the City's amendment to the Mission Bay Park Master Plan Update and the double underlined sections represent the Commission' suggested modifications):

27. Low Rise Emphasis: Mission Bay is an expansive area with wide and open views of the ocean from the surrounding hillsides. Low-scale buildings reinforce the open quality of the bay while minimally obstructing views to the sky and distant landforms. For this reason, and in recognition of the public mandate for a 30-foot height limit within the City's coastal areas (Municipal Code 101.0451), the Park buildings should continue to be low rise, except in the SeaWorld leasehold where the voter approved amendment to the City's Coastal Zone Height Limit Overlay Zone (Proposition D, 1998) would potentially allows building heights to a maximum of 160 feet, subject to the requirements of the Coastal Act and the Sea World Master Plan. Development within the leasehold shall be governed by the Sea World Master Plan, in addition to the Coastal Act and the Mission Bay Park Master Plan Update.

3. On Page 38 of the Mission Bay Park Master Plan Update, under Regional Parkland, after the introductory paragraph, the following paragraph shall be added:

Because of this projected regional growth, the City recognizes a need to improve the major undeveloped public areas of Mission Bay Park as the first priority under this plan. Open parkland and public recreational uses serve the broader public, including regional visitors. The City recognizes that public recreational improvements have not kept pace with intensification of commercial leaseholds.

The City agrees to prepare and complete, no later than 2 years from the effective certification of this LCP amendment, a capital improvement program for the development of significant public recreational facilities, including but not limited to, necessary infrastructure improvements at Fiesta Island and South Shores. This program will identify strategies for funding in addition to the mitigation funds (\$3.8 million) currently available for the recreational improvements. The capital improvement program will include a phasing component in order to ensure that the recreational improvements will be developed commensurate with new commercial development approved in the Park. The City agrees to make recreational improvements on Fiesta Island and South Shores the highest priority.

4. Suggested Modification #4 was deleted by staff at the hearing; however, to avoid confusion, renumbering has not occurred due to the numerous references to specific modifications by number in the staff report and on the record.
5. On Page 50 of the MBPBPU, Section 21 shall not be deleted as proposed by the City, and shall be modified as follows:

21. South Shores Commercial Parcel: Because of its limited water access and isolation from other areas of the Park, this 16.5 acre site is considered more suitable for commercial recreation purposes. The parcel has been configured such that ~~it's~~ the northern half portion (approximately six acres) lies outside the limits of the South Shores landfill while capturing a wide stretch of waterfront facing Pacific Passage. This allows a number of possible commercial uses to be considered, including the expansion of Sea World attractions, a 200-room motel, or a water-oriented entertainment center.

The underlying objective is that this parcel's "best use" is commercial recreation or visitor-serving commercial support facilities, compatible with existing and proposed public park/boating facilities at South Shores Park adjacent to the east. In accordance with public consensus on this issue, "best use" should not mean permanent and exclusive commercially-supporting parking. ~~Any new and permanent parking should be of such quantity and proportion as would be required to serve whatever commercial use may be proposed.~~ However, that portion (approximately ten acres) of the parcel constrained by the underlying landfill may be improved for parking purposes, to provide an additional safety cap over the landfill, consistent with landfill closure requirements.

6. The City's proposed replacement language for Section 21 shall instead be incorporated on Page 50 as Section 21.A and be modified to read as follows (for the purposes of this suggested modification, the single underlined sections represent the City's amendment to the Mission Bay Park Master Plan Update and the double underlined sections represent the Commission's suggested modifications):

**21a. SeaWorld:** In 1998, the City of San Diego's voters approved an amendment to the Coastal Zone Height Limitation Overlay Zone allowing

development to a maximum height of 160 feet within the SeaWorld leasehold. In keeping with the intent of the Mission Bay Park Master Plan to preserve existing viewsheds and visual corridors, the additional height available to SeaWorld should be used judiciously. Therefore, the development criteria for the SeaWorld leasehold shall be governed by the SeaWorld Master Plan (also known as the lease development plan) which is incorporated by reference into the Mission Bay Park Master Plan and the LCP Land Use Plan. In addition, any proposed development shall require an approved coastal development permit pursuant to the requirements of the Coastal Act.

7. On Page 114, Section 99. I-5, I-8 Interchange Ramps, shall be modified as follows:

**99. I-5, I-8 Interchange Ramps:** Several previous studies and reports, including the Midway Community Plan, have identified the need to complete the two remaining interchange ramps between Interstates 5 and 8. The two identified are the southbound ramp from I-5 west to I-8, and the eastbound ramp from I-8 north to I-5. These ramps would remove congestion from other freeway interchanges and local streets, and reduce the level of commuter traffic from Park roads.

Due to their expense, Caltrans is not anticipating implementing the ramps in the ~~foreseeable~~ immediate future. They are, however, an included project in the currently ongoing Interstate 5 Corridor Study, and would also require completion of a Project Study Report. However, as they would be of benefit to Park users and commuters alike, it is recommended that efforts to complete these studies and secure funding for the “missing” ramps be pursued. The Caltrans Project Study Reports for these and other traffic improvements at the I-5/SeaWorld Drive Interchange are necessary to determine the phasing and funding of improvements necessary to relieve congestion during peak summer recreational use and address the cumulative effects of increased commercial development, population and public recreational demand. These reports will be funded out of the first mitigation dollars received and utilized as a factor in determining appropriate mitigation measures for future commercial projects within Mission Bay Park.

SeaWorld shall pay the City a total amount of \$10,656,900 (subject to City/SeaWorld confirmation) (the “Traffic Mitigation Funds”), payable in five (5) annual installments, commencing on the date of effective certification of this land use plan amendment. Subsequent payments shall be increased to reflect a 3% increment or by the CPI, whichever is the greater amount. The 3% or CPI shall be applied to the amount of funding remaining to be paid. SeaWorld’s payment of the Traffic Mitigation Funds to the City shall be full satisfaction and implementation of the traffic mitigation measures identified in Section 4.4.5, Transportation and Circulation, Mitigation, Monitoring and Reporting Program of the Final Environmental Impact Report for the SeaWorld Master Plan Update (“EIR”). The City shall use the Traffic Mitigation Funds for the development and



construction of traffic congestion reduction measures in Mission Bay Park. The payment schedule and other details of this Traffic Mitigation Fund shall be set forth in the lease between the City and SeaWorld.

8. On Page 125, Section 113. Commercial Parcel shall not be deleted as proposed by the City and shall be modified as follows:

13. Commercial Parcel: The proposed 16.5+/- acre “best-use” commercial parcel is configured to take maximum advantage of the waterfront while still allowing the relocation of the Ski Club to the planned embayment. Its configuration also permits the retention of the existing restrooms. The actual boundary of the lease parcel should depend on the Ski Club area and shore public access requirements, but should not be less than 300 feet; this depth is the minimum necessary for a guest-housing, motel-type development as an optional commercial use. Any development of this parcel shall provide a minimum 50 ft. setback from the edge of rip rap to accommodate a public pedestrian promenade as an extension of the waterfront promenade planned for South Shores Park. All access improvements shall be oriented and designed to encourage public use of the waterfront. Buildings shall be setback an average of 25 feet from the 50 foot access setback line as defined in Appendix G, Design Guidelines, of the Mission Bay Park Master Plan Update.

9. On Page 153, the following addition shall be inserted at the end of the listed recommendations for ways to fund the deficit without increasing taxes:

7. Developer Fees.

10. On Page 155 the following shall be added as an additional recommendation #130.a.:

**130.a. Developer Fees:** The City recognizes that Mission Bay Park is, first and foremost, a public recreational facility. As commercial leaseholds come forward to redevelop, intensify and expand, areas and facilities affordable to the general public will be further impacted by increased traffic, noise, and runoff. Moreover, existing views may be impaired and the quiet enjoyment of parklands when adjacent to more active uses may be diminished. New public recreational improvements and necessary traffic improvements must be provided and are not adequately funded. Therefore, the use of developer fees as an option to provide funding necessary to mitigate the increasing public burdens brought about by commercial redevelopment, intensification and expansion shall be considered. Any such fees shall be used to construct planned public amenities throughout Mission Bay Park and identified traffic and circulation improvements within the park and on the surrounding road system.

The City agrees to prepare and complete, no later than 2 years from the effective certification of this LCP amendment, a capital improvement program for the

development of significant public recreational facilities, including but not limited to, necessary infrastructure improvements at Fiesta Island and South Shores. This program will identify strategies for funding in addition to the mitigation funds (\$3.8 million) currently available for the recreational improvements. The capital improvement program will include a phasing component in order to ensure that the recreational improvements will be developed commensurate with new commercial development approved in the Park. The City agrees to make recreational improvements on Fiesta Island and South Shores the highest priority.

11. On Page 169, the following modification shall be made to the PRIORITIES introduction paragraph:

With a \$170 million total implementation cost, of which only about \$90 million can be financed under the recommended incremental land lease revenue scenario (see Section X. Economics, Forecast Scenario B), a clear set of priorities should be established to guide the continuing development of the Park. Such priorities should seek to maximize short term benefit for the least possible cost. The City agrees to prepare and complete, no later than 2 years from the effective certification of this LCP amendment, a capital improvement program for the development of significant public recreational facilities, including but not limited to, necessary infrastructure improvements at Fiesta Island and South Shores. This program will identify strategies for funding in addition to the mitigation funds (\$3.8 million) currently available for the recreational improvements. The capital improvement program will include a phasing component in order to ensure that the recreational improvements will be developed commensurate with new commercial development approved in the Park. The City agrees to make recreational improvements on Fiesta Island and South Shores the highest priority.

12. On Page 85, the following Water Quality component shall be inserted prior to Section 59:

**a. Watershed Planning**

The City will support and participate in watershed based planning efforts with the Regional Water Quality Control Board. Watershed planning efforts shall be facilitated by helping to:

- Pursue funding to support the development of watershed plans;
- Identify priority watersheds where there are known water quality problems or where development pressures are greatest;
- Assess land uses in the priority areas that degrade coastal water quality;
- Ensure full public participation in the plan's development.

## **b. Development**

New development or redevelopment shall be sited and designed to protect water quality and minimize impacts to coastal waters by incorporating measures designed to ensure the following:

- Protect areas that provide important water quality benefits, areas necessary to maintain riparian and aquatic biota and/or that are susceptible to erosion and sediment loss.
- Limit increases of impervious surfaces.
- Limit land disturbance activities such as clearing and grading, and cut-and-fill to reduce erosion and sediment loss.
- Limit disturbance of natural drainage features and vegetation.

New development or redevelopment shall not result in the degradation of the water quality of groundwater basins or coastal surface waters including the ocean, coastal streams, or wetlands. Urban runoff pollutants shall not be discharged or deposited such that they adversely impact groundwater, the ocean, coastal streams, or wetlands, to the maximum extent feasible.

Development or redevelopment must be designed to minimize, to the extent practicable, the introduction of pollutants that may result in significant impacts from site runoff from impervious areas. To meet the requirement to minimize pollutants, new development or redevelopment shall incorporate a Best Management Practice (BMP) or a combination of BMPs best suited to reduce pollutant loading to the Maximum Extent Practicable.

Post-development peak stormwater runoff discharge rates shall not exceed the estimated pre-development rate for developments.

New development or redevelopment shall be sited and designed to minimize impacts to water quality from increased runoff volumes and nonpoint source pollution. All new development and redevelopment shall meet the requirements of the RWQCB, San Diego Region, in its Order No. 2001-01, dated February 21, 2001, or subsequent versions of this plan.

The BMPs utilized shall be designed to treat, infiltrate, or filter stormwater to meet the standards of the 85th percentile, 24-hour runoff event for volume-based BMPs and/or the flow of runoff produced from a rain event equal to at least two times the 85th percentile, 1-hour event for flow-based BMPs .

New roads, bridges, culverts, and outfalls shall not cause or contribute to shoreline erosion or creek or wetland siltation and shall include BMPs to minimize impacts to water quality including construction phase erosion control and polluted runoff control plans, and soil stabilization practices. Where space is

available, dispersal of sheet flow from roads into vegetated areas or other on-site infiltration practices shall be incorporated into road and bridge design.

Commercial development or redevelopment shall use BMPs to control the runoff of pollutants from structures, parking and loading areas.

Restaurants shall incorporate BMPs designed to minimize runoff of oil and grease, solvents, phosphates, and suspended solids to the storm drain system.

Fueling stations shall incorporate BMPs designed to minimize runoff of oil and grease, solvents, battery acid, coolant and gasoline to stormwater system.

New development or redevelopment shall include construction phase erosion control and polluted runoff control plans. The following BMPs should be included as part of the construction phase erosion control plan:

- Ensure vehicles on site are parked on areas free from mud; monitor site entrance for mud tracked off-site;
- Prevent blowing dust from exposed soils;
- Control the storage, application and disposal of pesticides, petroleum and other construction and chemical materials;
- Provide sanitary facilities for construction workers;
- Site washout areas more than fifty feet from a storm drain, open ditch or surface water and ensure that runoff flows from such activities do not enter receiving water bodies;
- Provide adequate disposal facilities for solid waste produced during construction and recycle where possible;
- Include monitoring requirements.

New development or redevelopment shall include post-development phase drainage and polluted runoff control plans. The following BMPs should be included as part of the post-development drainage and polluted runoff plan:

- Abate any erosion resulting from pre-existing grading or inadequate drainage.
- Control potential project runoff and sediment using appropriate control and conveyance devices; runoff shall be conveyed and discharged from the site in a non-erosive manner, using natural drainage and vegetation to the maximum extent practicable.
- Include elements designed to reduce peak runoff such as:
  - Minimize impermeable surfaces.
  - Incorporate on-site retention and infiltration measures.
  - Direct rooftop runoff to permeable areas rather than driveways or impervious surfaces to reduce the amount of storm water leaving the site.

Storm drain stenciling and signage shall be provided for new storm drain construction in order to discourage dumping into drains. Signs shall be provided at shoreline public access points and crossings to similarly discourage dumping.

Outdoor material storage areas shall be designed using BMPs to prevent stormwater contamination from stored materials.

Trash storage areas shall be designed using BMPs to prevent stormwater contamination by loose trash and debris.

Permits for new development or redevelopment shall be conditioned to require ongoing maintenance where maintenance is necessary for effective operation of required BMPs. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such time as the property is transferred and another party takes responsibility.

The City or lessees, as applicable, shall be required to maintain any drainage device to insure it functions as designed and intended. All structural BMPs shall be inspected, cleaned, and repaired when necessary prior to September 30th of each year. Owners and/or lessees of these devices will be responsible for insuring that they continue to function properly and additional inspections should occur after storms as needed throughout the rainy season. Repairs, modifications, or installation of additional BMPs, as needed, should be carried out prior to the next rainy season.

Public streets and parking lots shall be swept frequently to remove debris and contaminant residue. For streets and parking lots within leaseholds, the lessee shall be responsible for frequent sweeping to remove debris and contaminant residue.

New development or redevelopment that requires a grading/erosion control plan shall include landscaping and re-vegetation of graded or disturbed areas. An integrated vegetation management plan shall be required and implemented. Use of native or drought-tolerant non-invasive plants shall be required to minimize the need for fertilizer, pesticides, herbicides, and excessive irrigation. Where irrigation is necessary, efficient irrigation practices shall be required.

New development or redevelopment shall protect the absorption, purifying, and retentive functions of natural systems that exist on the site. Where feasible, drainage plans shall be designed to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner. Disturbed or degraded natural drainage systems shall be restored, where feasible, except where there are geologic or public safety concerns.

**c. Hydromodification**

Any channelization proposals shall be evaluated as part of a watershed planning process, evaluating potential benefits and/or negative impacts. Potential negative impacts of such projects would include effects on wildlife migration, downstream erosion, dam maintenance (to remove silt and trash) and interruption of sand supplies to beaches.

**Modifications to the Sea World Master Plan Update:**

13. On Page E-1, under Site Specific Proposals, the following modification shall be made to the first bulleted item::

A splashdown ride with an aquatic theme and storyline that integrates technology, flumes, rail, and marine life displays. The attraction will not exceed 95 feet at its tallest point and ~~trees~~ will be located within the developed portion of the park (in the general area of designated D-1 improvements and the western portion of the general area of designated I-2 improvements as shown on Figure II-3 of the plan) ~~planted~~ to soften the visual impact from ~~adjacent land and water~~ other areas of Mission Bay Park and surrounding communities. The design of the splashdown ride should be contemporary, responsive to the aquatic environment and avoid excessive or exaggerated thematic styles. The intent is to preclude from Mission Bay a theme park architecture.

14. On Page E-2, under Additional Project Review, the following modification shall be made:

The additional height of some attractions allowed by the passage of the SeaWorld Initiative under the SeaWorld Master Plan Update creates the need for greater public input to ensure that the quality of recreation and the visual character of Mission Bay Park will be maintained. SeaWorld is proposing additional local discretionary reviews for all projects greater than 30-feet in height, in addition to the required coastal development permit, as outlined in the implementation section of the plan.

15. On Page I-3, under Community Outreach and Issues Analysis, the final bulleted item shall be modified as follows:

**The appropriateness of a new hotel in Mission Bay Park (also relates to views, viewshed, and traffic issues).**

Prior to a formal project submission, the SeaWorld Master Plan Update requires a traffic study and an economic feasibility analysis assessing the need for another hotel in Mission Bay Park. Additionally, any hotel will require a City Council public hearing where the appropriateness of using public parkland for hotel

development and the status of public park improvements, along with viewshed and traffic impacts, can be assessed and discussed in the context of a specific proposal.

16. On Page II-7, the following language shall be added at the ends of the descriptions of both Area 4 SeaWorld Marina and Area 5 Perez Cove Shoreline:

SeaWorld recognizes that this entitlement was granted by the City of San Diego only. The Coastal Commission did not review or certify the 1985 SeaWorld Master Plan, and is in no way bound by any of its provisions.

17. On Page II-10, the following modification shall be made to the bulleted Tier 2 item, under Proposed Conceptual Development Program:

Tier 2 identifies sites within Area 1 that are candidates for redevelopment, however, no specific project is proposed for the immediate future. Submittals for individual projects will be made over a span of many years. Descriptions of the sites are provided further in this section. Potential Tier 2 projects are not approved as part of this Master Plan, and no entitlements to redevelopment in the designated areas are granted nor permit approvals implied.

18. On Page II-12, the following modification shall be made under Splashdown Ride (Site A-1), *Existing Site and Use*:

The site is located on 4.5 acres of land on the northeast corner of Area 1. Existing uses on the site include a landscape nursery and associated storage areas, trash compactor, and recycling facilities that will be relocated to other service sites within Area 1. The eastern portions of the site are undeveloped. The site for this attraction shall be located within the general area of designated D-1 improvements and the western portion designated I-2 improvements shown on Figure II-3 of the plan. The Splashdown Ride shall not be located along the perimeter of the leasehold boundary, nor adjacent to Mission Bay.

- On Page II-19, the following modification shall be made under Special Events Center Expansion (Site D-1), *Existing Site and Use*:

The 1.5-acre property site is located on the south boundary of Area 1 to the east of the Hospitality Complex. The site is currently used for guest parking. A special events center, under 30 feet in height, with a capacity for 1,000 people has been proposed to the west of the site but has not yet been approved by the Coastal Commission. The proposed facility would contain a ballroom, catering facilities, and meeting rooms (Figure II-10). The site is accessible from the adjacent guest parking area without the need to enter the theme park. The site is located on 4.5 acres of land on the northeast corner of Area 1. Existing uses on the site include a landscape nursery and associated storage areas, trash compactor, and

recycling facilities that will be relocated to other service areas within Area 1. The eastern portions of the site are undeveloped.

Any references to Splashdown Ride (Site A-1) shall be modified to Splashdown Ride (Site D-1 and western portion of Site I-2) with acreages adjusted accordingly, and any references to Special Events Center Expansion (Site D-1) shall be modified to Special Events Center Expansion (Site A-1) with acreages adjusted accordingly.

19. On Page II-12, the following modification shall be made to the third bulleted item under Splashdown Ride, *Design Criteria*:

Provide extensive tree plantings particularly on the south and east sides to soften the visual impact of the structure from ~~adjacent~~ land and water areas of Mission Bay Park and surrounding communities. Selected species should have the potential to provide dense year-round foliage and attain heights of 60 feet at maturity.

On Page II-12, the following modification shall be made to the sixth bulleted item under Splashdown Ride, *Design Criteria*:

- ~~• Prior to completion of the project, SeaWorld will construct a 10-foot wide landscaped pathway along the waterfront beginning at the northeast corner of the leasehold and extending westward for a distance of 500 feet.~~

On Page II-19, the following modification shall be added as a third bulleted item under Special Events Center Expansion, *Design Criteria*:

- Prior to completion of the project, SeaWorld will construct a 10-foot wide landscaped pathway along the waterfront beginning at the northeast corner of the leasehold and extending westward for a distance of 500 feet.

20. On Page II-13, revise or delete *Figure II-4 Conceptual Splashdown Ride Site Plan* to conform to the revised location and adjusted acreages required in Suggested Modification #18, above.

On Page II-19, revise or delete *Figure II-10 Conceptual Special Events Center Expansion Site Plan* to conform to the revised location of the Special Events Center Expansion and adjusted acreages required in Suggested Modification #18, above as revised.

21. Following Page II-20, the following modification shall be made to the new Tier 1 project added by the City (for the purposes of this suggested modification, the single



underlined sections represent the City's addendum to the SeaWorld Master Plan Update and the double underlined sections represent the Commission's suggested modifications):  
:

Offsite Bicycle/Pedestrian Path Improvements

*Proposed Project:*

To provide continuous shoreline access from SeaWorld's leasehold to Fiesta Island (a distance of approximately 4,700 feet) SeaWorld will construct a 10-foot wide landscaped pathway running from the northeast corner of the leasehold along the waterfront to the boat ramp and from the existing turn-around on the east side of the South Shores embayment, along the waterfront to the Fiesta Island Causeway. The accessway shall be completed by December 31, 2002. In addition, SeaWorld shall construct, in conjunction with the 10-foot pathway, a 50-foot wide public promenade, designed in substantial conformance with the promenade depicted in Figure 31 (South Shores Concept Plan) of the certified Mission Bay Park Master Plan and described as Item 112. of that plan. Final specifications and alignment details for the pathway and promenade shall be determined by the City Manager. The project shall then be submitted to the Coastal Commission for coastal development permit review and action, and, if approved, shall be constructed and open for public use prior to occupancy of any Tier 1 projects.

22. On Page II-22, the following modification shall be made to the last sentence under Site F-2:

Temporary facilities, that will not permanently damage the eelgrass habitat within the water area, ~~are exempted~~ may be permitted through the coastal development permit process, based upon site-specific biological analysis.

23. On Page II-24, the following paragraph shall be added after the introductory paragraph under Special Projects:

SeaWorld recognizes that any entitlements identified in this plan were granted by the City of San Diego only. The Coastal Commission did not review or certify the 1985 SeaWorld Master Plan, and is in no way bound by any of its provisions. Moreover, SeaWorld recognizes the need to re-evaluate each project at the time it is proposed, taking into consideration traffic issues and public recreational needs.

24. On Page II-28, the following additional footnote shall be placed on the table indicating the types and number of fireworks displays (as revised by the City of San Diego):

\* The 150 annual fireworks displays shall be monitored as outlined below. At the end of five years, the impacts of fireworks displays at SeaWorld will be re-evaluated by the regulatory agencies identified below to determine if substantial evidence exists that the fireworks displays have significant adverse impacts. If no adverse impacts are identified, the fireworks displays may continue. If adverse impacts are evident, the City and SeaWorld shall initiate an LCP amendment to determine whether or not the fireworks displays may be allowed to continue.

25. On Page II-28, under Fireworks Displays, the following new language shall be added before the last paragraph:

Due to rising concerns over the possible environmental effects of fireworks displays, both from public recreation and water quality standpoints, SeaWorld will implement/continue an expanded monitoring program during the next five years. Monitoring results will be submitted to the Coastal Commission, Regional Water Quality Control Board, National Marine Fisheries Service, U. S. Fish and Wildlife Service, and the California Department of Fish and Game, on an annual basis. However, at the end of the first year, SeaWorld will present its findings to the Coastal Commission and the above agencies for review and possible revisions to the expanded monitoring program. At the end of five years, the potential adverse impacts of fireworks on both environmental resources and public recreation will be re-evaluated by the identified agencies. The program shall include the following components:

- a. SeaWorld will increase the area of clean-up on Fiesta Island beyond the shoreline berm, proceeding as far inland as necessary to remove all fireworks debris the morning after each show.
- b. SeaWorld will continue its surface water clean-up procedures after each fireworks show.
- c. SeaWorld will continue diving, at least once prior to, and once following, each summer season, to determine if solids are accumulating on the floor of Pacific Passage.
- d. SeaWorld will continue to monitor the levels of chemical constituents, particularly those associated with pyrotechnic displays (barium, strontium, antimony, etc.) in the waters of Pacific Passage and in the soils along the shoreline of Fiesta Island. Testing shall be performed monthly for the first year and the testing protocol shall be re-evaluated after one year.
- e. The above testing and monitoring shall also occur within the channel leading to the ocean (Mission Bay Channel) to determine the potential effect of tidal influence on the location of debris and chemical constituents associated with pyrotechnic displays.

If future monitoring of Fiesta Island and the waters in Pacific Passage and/or Mission Bay Channel identify significant levels of toxic constituents associated with SeaWorld's fireworks displays, SeaWorld is committed to undertake any remediation activities required by the identified regulatory agencies, or cease such displays altogether. SeaWorld may choose to conduct the same types of monitoring at other sites in Mission Bay Park to provide a reference baseline as a way to distinguish impacts of fireworks from normal background levels of the identified chemical constituents.

In addition, SeaWorld recognizes the endangered status of the California least tern, and the proven ability of the Mission Bay Park environment to aid the recovery of this species. To assist in that endeavor, SeaWorld will protect the designated least tern nesting sites on Mariner's Point and Stony Point from adverse disturbance during fireworks displays. SeaWorld will move the fireworks staging barge to a location approximately one-half (1/2) mile eastward of the Stony Point Preserve during the least tern breeding season, which runs from April 1<sup>st</sup> to September 15<sup>th</sup> of each year.

26. On Page III-1, the introductory paragraph under Development Criteria shall be modified as follows:

This section sets forth the development parameters applicable to the entire leasehold or specific leasehold area identified in this plan. The intent is to ensure that all future development will be distributed and constructed in a manner that, to the extent feasible, harmonizes with the established visual quality of Mission Bay Park. ~~The interior renovation or replacement of an existing structure within the same footprint, height and building envelope as the original structure shall be exempted from the setback and bulk plane requirements but shall be counted in the total height distribution.~~ The setback requirements for shoreline redevelopment are intended to provide a waterfront orientation to SeaWorld visitors inside the park and reduce the visual impact of development from public views from the water and surrounding parklands. The setbacks will extend from the public promenade for SeaWorld visitors inside the park in the same manner as in other commercial leaseholds in Mission Bay Park. SeaWorld presently provides waterfront access for 3.5 million to 4 million guests per year. SeaWorld will enhance this access to promote SeaWorld visitors' use. In addition to the public promenade described previously, waterfront enhancements could be in the form of pathways, bay-front patios, or open lawn areas within the setback areas. The setback requirements for shoreline redevelopment shall not apply to Tier 2 site F-2, provided this site is redeveloped as a renovated waterfront stadium.

27. On Page III-1, the section identified as Leasehold Height Distribution shall be deleted as follows:

~~Not more than 25% of the total 189.4 acre leasehold area shall exceed 30 feet in height.~~

28. On Page III-1, the Theme Park Height Distribution table shall be deleted as follows.

<u>Height</u>	<u>Acreage</u>	<u>% of Area 1</u>
30+ - 60 feet	13.1 acres	15%
60+ - 100 feet	6.1 acres	7%
100+ - 130 feet	1.8 acres	2%
130+ - 160 feet	0.88 acre	1%

29. On Page III-2, revise Figure III-1 to conform to the revised Splashdown ride and Special Events Center locations required in Suggested Modification #18.

30. On Page III-3, under Setbacks and Buffers, the following modifications shall be made:

#### **Shoreline Setback**

Redevelopment at SeaWorld and all theme park improvements in the 16.5-acre expansion area shall be setback from the shoreline to provide an open space, public-oriented, park-like setting along the water. A minimum ~~25-foot~~ 75-foot shoreline setback shall be required of all future development except for water- or shoreline-dependent uses such as marina facilities, water intake and discharge facilities, or park attractions oriented towards open water use (the waterfront stadium being an example). The setback shall begin at the top edge of the existing rip-rap revetment or the bluff edge, whichever elevation is greater. Buildings 30 feet in height or less may encroach into the inland 25 feet of the 75-foot zone in accordance with the average setback requirements defined in Appendix G, Design Guidelines, of the Mission Bay Park Master Plan Update, but, in no case, shall buildings be closer than 50 feet from the existing rip-rap revetment or the bluff edge.

#### **Shoreline Bulk Plane Setback**

All new development (except in Areas 4 & 5) shall be setback behind a bulk plane line beginning at the shoreline setback (~~25~~ 75 feet from the existing rip-rap revetment or the bluff edge) at a height of 30 feet and inclined at a one-to-one angle (45°) until the 160-foot height limit is reached

31. On Page III-5, the following modification shall be made under Attraction Themes/Elements:

At least 75% of the total number of attractions (excluding the hotel) within SeaWorld shall contain a significant animal, education, or conservation element. Specific criteria for compliance with this requirement shall be set forth in the SeaWorld lease with the City of San Diego and shall be designed to ensure the overall prevalence of significant animal, education and conservation attractions.

32. On Page IV-11, the following modification shall be made to the first paragraph, under Landscape Design Zones, The Shark Encounter Exhibit to South Shores Road Shoreline:

The shoreline extending east to South Shores Road is the primary emergency and service access for SeaWorld. The functional aspects of the area require open access to loading and maintenance areas and could be combined with enhanced public access to and along the shoreline. The existing landscaping is primarily drought-tolerant species that are compatible with Mission Bay wetlands. Moderate height trees and shrubs in this landscape provide partial screening of fencing and exhibit buildings. The easternmost area (expansion area) is undeveloped, but planned for future theme park attractions. The shoreline of the expansion area shall be developed consistent with the setback requirements of the Mission Bay Park Master Plan Update. This currently undeveloped site serves as a transition area between the existing SeaWorld theme park and the public facilities at South Shores Park. This area should be developed to encourage public access to the shoreline consistent with other commercial leaseholds in Mission Bay Park.

33. On Page V-5, the following modification shall be made to the Plan Amendment Process:

The SeaWorld Master Plan anticipates that the majority of projects will not exceed the thresholds for Level 1 review. Projects involving greater scale and height will still be required to conform to the development criteria set forth in Section III of this plan. Any project that does not conform to the development criteria will require a plan amendment. The plan amendment process requires environmental review and public hearings before the Planning Commission, ~~and~~ City Council and California Coastal Commission.

34. On Page A-2, the fourth full paragraph shall be modified as follows:

~~The amount of development that can exceed 30 feet in height is limited to 25% of the leasehold. The plan further limits height in the main SeaWorld Theme Park (Area 1) to much smaller percentages that decrease for each successive increase in height level. At the highest level not more than one percent of Area 1 could be above 130 feet in height. No specific height limits are allocated in the Master Plan. The appropriate heights for each new development will be analyzed during the Coastal Development Permit process for any particular development taking into consideration visibility from the water, major coastal access routes and vantage points and the character and scale of development in the surrounding public parkland. Additionally the cumulative use of the heights above 30 feet allocations will be mapped by SeaWorld and verified by City and Coastal Commission staff.~~

35. On Page A-5, the following paragraph shall be added at the end of the section titled Traffic and Transportation:

Prior to implementation of the above-referenced public transit improvements, SeaWorld is committed to easing peak summer season traffic congestion in Mission Bay Park. To do so, SeaWorld shall offer a five dollar (\$5) discount on admission to every guest that provides evidence that such guest rode public transit to the theme park for that visit, i.e., provides a same-day transit ticket or receipt. SeaWorld may also ease traffic congestion by implementing one or more of the following: (i) providing a tram or shuttle service from the Old Town and Linda Vista trolley stations to SeaWorld operated on all weekends (Saturdays and Sundays) and holidays from the beginning of Memorial Day weekend through Labor Day; (ii) offering additional financial incentives to transit (bus or trolley) users in the form of reduced admission, free food or drink, reimbursement of transit costs, or other means; (iii) providing on-site transit ticket purchases for its employees; (iv) offering flexible work schedules for employees utilizing public transit; and, (v) referencing the availability of public transit to park visitors in SeaWorld's circulated brochures.

36. On Page A-6, the last paragraph on the page, under Water Quality, shall be modified as follows:

Additionally, SeaWorld's landscape serves as a type of storm water control by providing erosion control, filtration and vegetative uptake of pollutants. Finally, SeaWorld has committed itself to a program of early 100% runoff treatment in the future involving a variety of treatment options based on the latest pollution control technology. Moreover, as a lessee of public land within Mission Bay Park, the water quality controls/regulations certified in the Mission Bay Park Master Plan Update must be implemented fully by SeaWorld for its leasehold.

37. On Page A-7, an asterisk shall be placed by the word "entitlement" in the first sentence on the page, and the following footnote added:

\*The Coastal Commission has not reviewed or certified the 1985 SeaWorld Master Plan as part of the certified Local Coastal Program, nor was that plan incorporated into the Mission Bay Park Master Plan as certified by the Commission in 1995. Therefore, any entitlements embodied in that plan are not recognized, and have not been endorsed, by the California Coastal Commission.

**PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF  
SAN DIEGO, MISSION BAY PARK LAND USE PLAN AMENDMENT,  
AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

LCP Amendment 2-2001-C is a request by the City of San Diego to amend the City's certified Local Coastal Program (Land Use Plan) to incorporate the SeaWorld Master Plan Update into the Mission Bay Park LUP segment of the City's LCP. The request includes several amendments to the certified Mission Bay Park Master Plan incorporating the height exemption approved by the voters in 11/98, exempting SeaWorld from the City's 30-foot height limit in the coastal zone, and incorporating the Sea World Master Plan Update as a component of the LUP. The SeaWorld Master Plan Update itself proposes redevelopment and expansion of SeaWorld over the next twenty years under a tiered program. Components of the plan address development criteria, design guidelines and five Tier 1 developments: a splashdown ride proposed partially within the adjacent 16.5 acre leasehold expansion area, an educational facility, major front gate renovations, parking lot improvements in the expansion area and on- and off-site access improvements for pedestrians and bicyclists. The Commission's San Diego office currently has pending permit applications for several of these improvements. The plan also delineates eight sites for Tier 2 development, but proposes no specific improvements at this time. These areas, where redevelopment is anticipated in the future, are shown as shows/rides/exhibits in the submitted plan. Finally, the plan identifies three special projects: expansion of the marina, construction of a hotel and construction of a multi-story parking garage/transit center, that are not expected to occur for many years.

**B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that portions of the Land Use Plan as set forth in the preceding resolutions, are not in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

- a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.
- b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan does not conform with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone with regards to conservation of coastal zone resources or public access and recreational opportunities.

**C. NONCONFORMITY OF THE CITY OF SAN DIEGO LCP  
AMENDMENT NO. 2-2001-C WITH CHAPTER 3**

**1. Public Access and Recreation.** The following Chapter 3 policies of the Coastal Act address its mandate to maximize public access to and along the shore, and are most applicable to the proposed LCP amendment:

**Section 30210.**

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

**Section 30212.**

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. ...

**Section 30213**

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.



### **Section 30223**

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

The City's proposed LCP amendment modifies several sections in the certified Mission Bay Park Master Plan/LCP Land Use Plan (LUP), as well as adding the new SeaWorld Master Plan Update as a component of the LUP. Several aspects of the proposed amendment address public access and public recreational opportunities. As a whole, the proposed LUP amendments will affect public access both positively and negatively, and as currently proposed, the plan cannot be found consistent with the cited Coastal Act policies.

Negative impacts to public access include the loss of 16.5 acres of undeveloped land, which the City has recently added to the SeaWorld leasehold. This parcel is delineated for commercial recreation uses in the certified Mission Bay Park Master Plan, and is located between SeaWorld and the South Shores public boat ramp and park improvements to the east. In its currently undeveloped state, this parcel has historically been available to the general public for passive recreational uses; it includes an approximately 500-foot stretch of riprapped shoreline along Pacific Passage (an arm of Mission Bay) with a flat upland area where fire rings used to exist. Since the City approved its new lease with SeaWorld, the fire rings have been partially removed. However, the 16.5 acre site has not been fenced, such that this unimproved area remains available to public use.

Another negative aspect of the SeaWorld Master Plan is the continuation of a break in public shoreline access. There are only a few remaining areas of Mission Bay Park where public access is routed inland around existing commercial leaseholds rather than along the shoreline. SeaWorld is one of these leaseholds. Throughout the remainder of the park there exists (or will exist as funding permits) continuous public access along the immediate shoreline. The certified Mission Bay Park Master Plan cites the completion of this public access pathway as a goal, and includes lease line and building setbacks to guarantee that space for the continuous access route is available along the entire shoreline. Only with such provisions could the Commission find the certified LUP consistent with the cited public access policies of the Coastal Act.

The proposed SeaWorld Master Plan does provide for a ten-foot wide shoreline access path along the 500 feet of the new expansion area, but this access would lead to a cul-de-sac which does not connect to the existing perimeter pedestrian/bicycle path. Moreover, this narrow path leading nowhere is viewed by SeaWorld as an attractive nuisance, conducive to illegal activity where law enforcement would be difficult. The Commission concurs with this conclusion, and finds the intent of the certified plan should be implemented in this lease expansion area. The certified Mission Bay Park Master Plan calls for a 50-foot setback from the top of any armored shoreline (this area has riprap) to

an approved lease boundary, reserving this area for public access, and an additional 25-foot setback from the lease line to any structures.

It would appear the City approved the expanded SeaWorld lease boundary in a location inconsistent with its LUP, since the lease boundary runs along the shoreline itself, rather than 50 feet inland of the top of the riprap bank. Although the Commission has no direct jurisdiction over the leasing of public lands, it finds that, in order for the proposed master plan to be consistent with Chapter 3, the intent of the certified LUP should be carried out. This intent would require a total structural setback of 75 feet from the top of the riprap bank, with the 50 feet closest to the water available to the general public. An area 50 feet wide, instead of 10, would provide adequate space for reasonable public use, and would remove the “attractive nuisance” aspect of a long narrow corridor.

Although the proposed SeaWorld Master Plan includes several public access benefits, which will be discussed in the findings for approval of the plan with modifications, the Commission finds that these do not adequately offset the loss of 16.5 acres of previously available public parkland, do not make up for the lack of adequate setbacks proposed in the plan and fail to meet the objective of a continuous shoreline public path. Additionally, nearby public park areas, which could help offset the expansion of SeaWorld, are greatly underutilized because the City has not been able to make necessary public recreational improvements. Two significant areas, identified in the plan as the areas where the public recreational demand must be accommodated, are currently undeveloped or underdeveloped. These are South Shores and Fiesta Island. The Mission Bay Park Master Plan Update states the following regarding these areas.

“Encompassing over 600 acres of land area, South Shores and Fiesta Island represent a significant part of the future of Mission Bay Park. One third of regional-oriented recreation, the largest naturally landscaped upland areas, major sport and cultural event venues, and the Park’s parking and transportation hub will be located in these areas of the Park. Other, more contained facilities, will also be included, such as a boat ramp, potential commercial leases, new swimming areas and primitive camping. As a goal...

**...South Shores should be an intensively used park area that attracts visitors to a variety of public and commercial recreation venues yielding, in aggregate, a summary view of the Park’s grand aquatic identity. For its part, Fiesta Island should remain essentially open yet supportive of a diversity of regional-serving public and low-key, for-profit recreation and natural enhancement functions.**

The key to meeting these goals is the dedication of the Island’s southern peninsula, the current site of sewage treatment sludge beds, as a regional parkland area. This site enjoys unequaled access to clean Bay waters, outstanding Bay views, and is conveniently served by Park and regional roadways. This area of

the Island also faces South Shores, which achieves the concentration of regional parkland uses to the benefit of transit, public facilities, and commercial services.”

The development which is anticipated for these areas provides the type of lower-cost visitor and recreational facilities protected by Section 30213 of the Coastal Act. SeaWorld is a private commercial facility operating through a lease arrangement with the City on public parkland and available only to those able to afford the park’s admission charge. The certified Mission Bay Park Master Plan identifies needed public recreational improvements within Mission Bay Park and estimates costs for implementation. However, nothing in the plan assures completion of public recreational improvements prior to or concurrent with private commercial development. Yet, private commercial development has a cumulative impact on traffic and circulation within the park and occupies land area otherwise available for lower cost visitor and recreational facilities. To offset this impact, the SeaWorld Master Plan Update, as approved by the City, provides only minimal public improvements at the adjacent South Shores Park, for pedestrians and bicyclists, in comparison to the significant redevelopment of the commercial site and expansion of the private leasehold into prior public parkland. Thus, the Commission finds the public access provisions of the Sea World Master Plan Update, and some provisions of the Mission Bay Park Master Plan, inconsistent with the cited Chapter 3 policies and the Coastal Act’s directive to encourage and provide public lower-cost visitor and recreational facilities, where feasible.

**2. Visual Resources.** The following Coastal Act policies addressed the protection and enhancement of visual resources and state, in part:

**Section 30240.**

... (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

**Section 30251.**

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas....

Mission Bay Park is recognized nationally as a public resource providing a wide variety of passive and active recreational opportunities in a unique, visually-pleasing setting. The park is generally horizontal in character, consisting primarily of rolling grassy areas, sandy beach and open water. There are a number of commercial leaseholds scattered throughout the park, which have been developed to various intensities. For the most part,

the structural improvements in Mission Bay Park are low scale and do not detract from the wide open feeling of the park. Limited exceptions exist in four hotel towers (the Hyatt Islandia, the Bahia, the Catamaran and the Hilton) and two existing attractions at SeaWorld (the observation tower and the gondola ride). The gondola ride, whose supports are 100 feet tall, is in an area of existing mature vegetation that is sixty to eighty feet in height and provides screening. The other five facilities are highly visible from many vantage points, both inside and outside Mission Bay Park. These facilities all predate the Coastal Act and the City's coastal zone height initiative; no permanent structural improvements exceeding 30 feet in height have been approved anywhere in Mission Bay Park since passage of the Coastal Act and City height initiative.

In 1998, SeaWorld sponsored a new initiative exempting its leasehold from the 30-foot height limit and allowing future development to go as high as 160 feet maximum (half the height of the existing observation tower). The voters approved the initiative that November. However, the Mission Bay Park Master Plan, certified by the Coastal Commission in 1995, incorporated the City's existing coastal zone height limit of 30 feet for all new development in the park. Thus, the City is now proposing to amend the Mission Bay Park Master Plan to acknowledge a height exemption for SeaWorld, and has approved the proposed SeaWorld Master Plan which would accommodate a significant amount of new development exceeding 30 feet in height and expanding SeaWorld into an undeveloped 16.5 acre parcel to the east.

Under the proposed plan, up to 25% of the 189.4-acre leasehold, or a total of approximately 47.35 acres, could ultimately be developed with structures exceeding thirty feet in height. With the exception of a potential future parking garage, all currently envisioned new development exceeding thirty feet in height will occur within the 87.7 acre Area 1, which is the existing interior portion of the theme park, plus the new area of expansion. Height allocations within Area 1 are further broken down in the proposed SeaWorld Master Plan as follows: between 30-60 feet, 13.1 acres or 15%; between 60-100 feet, 6.1 acres or 7%; between 100-130 feet, 1.8 acres or 2%; and, between 130-160 feet, 0.88 acre or 1%. The plan further provides that not more than four of the twelve delineated development sites within Area 1 can have structures exceeding 100 feet in height. The remaining eight areas could conceivably develop with structures up to 99 feet in height.

To put this into perspective, the existing Hilton Hotel, an approximately 770,141 sq.ft. leasehold located along the eastern perimeter of Mission Bay Park, has an eight-story tower which is 90-feet in height and occupies an area of 5,850 sq.ft., or roughly 0.76% of the site. The Hyatt Islandia, located on an approximately 412,078 sq.ft. leasehold in the Quivira Basin area of the park (southwest quadrant), has an 18-story tower; although exact figures were not readily available, this would be estimated at approximately 160-180 feet in height. The Bahia leasehold (approximately 565,409 sq.ft. in size) is located on Bahia Point, a narrow peninsula extending north from West Mission Bay Drive. It has two existing structures that exceed 30 feet in height. The highest is a five-story tower building reaching 61 feet in height, which covers approximately 15,000 sq.ft. of land, or roughly 2.7% of the site; a second, four-story building appears to cover perhaps half as

much of the site, meaning that approximately 4-5% of the overall site is occupied by structures exceeding 30 feet in height. The Catamaran, located on Sail Bay at the northwestern corner of Mission Bay Park (technically outside the park in the Mission Beach community, but fronting on the bay), has a 13-story tower, estimated to be approximately 120-130 feet tall on an existing 306,662 sq.ft. property. All of these properties have newer additions and associated facilities which do not exceed 30 feet in height.

As a comparison, the proposed SeaWorld Master Plan could allow over 47 acres (approximately 2,247,320 sq.ft.) to be developed at heights exceeding 30 feet, since it provides that 25% of the site can exceed 30 feet. The Tier 1 projects are described in detail in the master plan, and corresponding permit applications have been submitted to the Commission office in San Diego; four of the five Tier 1 projects are proposed to exceed 30 feet in height. The splashdown ride alone will occupy over half an acre of land; of that, the three supporting towers (95, 89, and 83 feet in height) occupy a footprint of approximately 3,400 sq.ft., and there are also significant flume and track elements ranging between 30-80 feet in height. The proposed 3-story educational facility will attain a height of 45 feet, and will cover approximately 8,500 sq.ft. of land, whereas an expanded special events area and front gate renovation are proposed to have roof articulation up to 40 feet in height, but the plan also allows each site a single icon structure up to 60 feet in height. Under Special Projects, the master plan identifies a four-level parking garage. This would be built when needed, and is limited in the plan to a maximum of 45 feet in height. Dimensions are not given in the plan, but the area delineated in Figure II-3 of the plan appears to be 5 or 6 acres in size, or well over 200,000 sq.ft.; it can probably be assumed that this total includes space for landscaping, etc., such that the actual garage may be less than half that size.

In any event, these known proposals would appear to create something in the range of  $\pm 3$  acres (approximately 130,680 sq.ft.) of land coverage with structures exceeding 30 feet in height. The 25% limit for Area 1 would allow an additional, approximately 44 acres (1,916,640 sq.ft.) to develop above 30 feet in height. Such facilities would expect to be built within the eight delineated Tier 2 project sites; four of the eight sites are waterfront sites and one of the others would occupy a portion of the 16.5-acre expansion area. All of these are perimeter sites that are visible from areas outside SeaWorld. Although the footprints of the Catamaran and Islandia towers are not currently known, a very generous estimate would be an acre each. Under that scenario, it would appear that the five hotel towers together cover less than SeaWorld's proposed Tier 1 projects alone, and the Tier 1 projects account for less than a tenth of what could ultimately be built to a height above 30 feet. This gives a frame of reference for envisioning what the SeaWorld leasehold could look like if built out to the maximum scale and bulk allowed by the proposed master plan.

The Commission finds that buildout of SeaWorld under its proposed Master Plan would not be consistent with the cited Chapter 3 policies of the Coastal Act. Section 30240(b) requires that projects be sited and designed to prevent impacts to public recreation areas

that would either degrade those areas or cause a loss of function within them. In addition, Section 30251 provides that views to or along the coast be preserved and protected, and that new development be compatible with the character of surrounding areas. The proposed 16.5-acre expansion area is currently undeveloped. The site is characterized by scattered low-growing weeds and bare dirt/sand. The public recreational amenities at South Shores Park are located immediately east of this parcel, and include a boat ramp, sandy beach, parking areas and restrooms. Future additional public recreational improvements identified in the Mission Bay Park Master Plan include turf and picnic areas, a waterfront promenade, and a grass amphitheatre.

Across Pacific Passage to the north lies Fiesta Island. Along with South Shores, this is the last remaining large piece of undeveloped parkland designated for public recreational uses. Like South Shores, anticipated improvements include grassy picnic areas, open play areas, restrooms and parking lots. It is also possible that a swimming beach would be constructed along Pacific Passage, the narrow body of water separating Fiesta Island from SeaWorld. These two areas encompass 600 acres of the park and are currently undeveloped or underdeveloped and, thus, not available for the intense public use anticipated by the plan.

Although there is no view of the water from the nearest coastal roadway (SeaWorld Drive), people availing themselves of these public amenities currently have views of, and across, the SeaWorld proposed expansion area, and some views of the existing SeaWorld facilities as well. The SeaWorld Master Plan currently proposes to build a splashdown ride in this general location, partially on the expansion area and partly within existing SeaWorld. The ride, as shown in the Master Plan, would only be set back from the top of the riprap bank of Pacific Passage a distance of 25 feet, and three tower elements of the ride would be between 83 and 95 feet in height. Within the 25-foot setback, the Master Plan calls for a 10-foot wide public walkway extending west from the northern terminus of South Shores Road for a distance of 500 feet, ending at an existing service gate for SeaWorld.

The public's view of the area, and portions of Mission Bay itself, would be adversely affected by this proposed high intensity use in such close proximity to the proposed passive and active public uses adjacent to, and across the water from, SeaWorld. Master Plan renderings identify that the proposed ride in this location will be visually prominent to park visitors in adjacent public areas and from surrounding residential communities as well. In addition to the height necessary to operate this type of thrill ride, such amenities also generally result in considerable crowd noise. Both the impacted views and a significant increase in noise may discourage use of South Shores, Fiesta Island, and the proposed public walkway between the ride and the shoreline. Although the Commission recognizes that this 16.5-acre expansion area will be developed in some fashion, it finds that the currently proposed use (a thrill ride) is inappropriate in this location. It would be visually prominent to many nearby park users and more distant residents, and, besides being visually intrusive, may degrade the recreational experience of park visitors in general.

The Commission is not opposed to the concept of some taller buildings/structures at Sea World, nor does it oppose the concept of roller-coaster type rides. However, it finds that taller structures should be more limited in number than established in the SeaWorld Master Plan and placed within the existing, developed area of the theme park, rather than on its periphery or at the water's edge. The Commission cannot find the proposed Master Plan consistent with the cited Coastal Act policies due to the significant visual impacts that would occur under the plan's current design.

**3. Water Quality.** The following Chapter 3 policies are most applicable to the certified Mission Bay Park Master Plan and the proposed SeaWorld Master Plan Update:

**Section 30230.**

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

**Section 30231.**

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

As with all structural development in Mission Bay Park, SeaWorld contributes its share of stormwater runoff into the bay. In addition, SeaWorld is unique in that it uses sea water for its aquariums and show tanks, and circulates this water to and from the bay continually. To address this concern, SeaWorld has constructed two on-site treatment facilities. Although designed primarily for the treatment of used aquarium water, these facilities also treat about 25% of SeaWorld's surface runoff from the improved parking lots before it is discharged into Mission Bay. The remainder of the parking lot runoff enters the City's municipal storm drain system which is outfitted with low-flow interceptors. During more intense storm events, the nearest storm drain discharges directly into Mission Bay in the Perez Cove area (westernmost portion of SeaWorld).

A portion of the eastern Sea World leasehold is underlain by the inactive Mission Bay Landfill. The City of San Diego operated the landfill from approximately 1952 until 1959. The landfill reportedly accepted municipal solid waste and some liquid industrial

wastes (including acids, alkaline solutions, solvents and paint wastes). The U.S. Environmental Protection Agency estimates that up to 737,000 gallons of industrial wastes may have been disposed at the landfill during its operation. After closure of the landfill, dredged material from Mission Bay (consisting of mostly fine-grained material) was placed on top of the former landfill surface to a depth of approximately 15 feet. A portion of the site is currently paved with a chip-seal paving surface which allows for diffusion of landfill gasses while remaining impervious to water infiltration. This facility has generated a lot of public concerns over the current status of the landfill from a public safety perspective. Since this has been determined not to be an issue in relationship to the proposed LCP amendments, the full analysis is given later in this report in the findings for approval with modifications.

The public has also raised a concern as to whether SeaWorld's fireworks displays adversely affect land, air or water resources. These displays are typically held nightly between Memorial Day and Labor Day and intermittently throughout the remainder of the year to celebrate holidays and special events. Submitted reports indicate that, on average, there have been between 110-120 fireworks displays annually for the past several years. Although SeaWorld's Master Plan originally proposed a significant increase in the number of annual displays, the City's approval placed the limit at 150 per year, representing a small increase over what occurs now. At present, there is no established limit in any plan document, and fireworks could occur 365 days a year if it were economically feasible.

The environmental concerns over fireworks center around the debris that remains after each firework display, and whether or not this has any toxic effect on air, land or water. Some debris falls into the bay and some onto Fiesta Island, which is the nearest land body to the barge where the displays are staged. The typical components of fireworks include heavy metals such as Strontium, Copper Compounds, Magnesium, Titanium, Aluminum, as well as Black Powder containing carcinogenic sulfur-coal compounds. They also include a significant amount of paper packaging material. Not all materials are consumed in the explosion, and not all shells explode. Thus, fireworks residue may include paper, bits of wiring, traces of powder and sulfur, and the infrequent unexploded shell.

SeaWorld conducts clean-up activities after each display, but not all debris is removed through those efforts. Clean-up activities include skimming the water surface to retrieve any floating debris, and hand pick-up in the nearshore area of Fiesta Island. The main complaints seem to be that the water crew misses anything that has settled to the bottom, and the land crew doesn't go far enough inland to complete the job. Commission staff checked the southern portion of Fiesta Island several days after a fireworks display, when there had been two small rainstorms during the interim, and discovered a great deal of debris scattered over an area of about 40-50 acres. More significant rainfall would probably result in some of this debris being washed into the bay.

The bigger question, of course, is what effect this debris might have on land or water resources, and whether any impact is cumulative as well as individual. Since the debris



found on Fiesta Island by Commission staff had already been there for several days, through two rain events, it does not appear to be quickly bio-degradable. Members of the public have indicated the bits of trash can remain for months. There is inconclusive evidence that other than as a source of litter, there is any biological harm. The issue does not appear to have been widely studied to date, but some literature is available.

In 1992, a report titled "*Environmental Effects of Fireworks on Bodies of Water*" was done for the World Showcase Lagoon, a man-made water body at Disney World/Epcot Center in Florida. Sampling of both the water column and sediments was conducted intermittently over a ten year period. The testing revealed higher than normal concentrations of antimony, barium and strontium, three common ingredients of fireworks, demonstrating that fireworks debris does accumulate over time. However, this did not seem to cause any change in the biota or appearance of the water body. The report concluded that when the firework displays are conducted infrequently over water bodies that have some level of flushing/dilution, effects are probably negligible. If there are frequent displays over closed water bodies, the report was less optimistic and suggested a need for further studies.

A second report, published in February, 1999 and titled "*Effects of Outdoor Pyrotechnic Displays on the Regional Air Quality of Western Washington State*," was also submitted for the Commission's consideration, both by SeaWorld and its opponents. Although published much more recently than the first report, the data was actually collected and analyzed during the week of July 1 through July 7, 1990. The report showed highest concentrations of smoke-related particulate matter on July 4<sup>th</sup>, and determined the cause to be holiday fireworks displays. The distribution of smoke emissions resembled the population distribution, in that the greatest concentrations were found where large cities were located. The conclusion was that fireworks displays in populous regions of the country might violate the National Ambient Air Quality Standard.

Lastly, SeaWorld contracted with Science Applications International Corporation (SAIC) to prepare a report titled "*Evaluation of Impacts from SeaWorld Fireworks Displays to Mission Bay Sediment Quality*." Sampling was conducted at three sites around the fireworks staging barge and one at a reference location in Mission Bay. The study was patterned after the 1992 Florida study, and specifically measured antimony, barium and strontium. Although higher than expected barium counts were found, they were still within a normal range. The report made the following conclusions:

"SAIC found no evidence that the SWSD [SeaWorld San Diego] fireworks displays are adversely affecting Mission Bay. No metals contamination of Mission Bay sediments associated with the SWSD fireworks display was evident, with the possible exception of slightly elevated barium concentrations, which were approximately two-fold higher than expected based on the corresponding sediment iron concentrations. Despite this slight enrichment, the absolute concentrations of barium in sediments near the fireworks barge were low (average: 227 mg/kg),\* and these levels are not expected to cause impacts to

water quality, toxicity to marine organisms, or otherwise interfere with any beneficial uses of Mission Bay.”

\*Later in the study, the report clarified that, “Barium is the fourteenth most abundant element in the earth’s crust, with an average concentration of 400 mg/kg and a range from less than 1 to 2,000 mg/kg (Neff, 1997).

It should be noted, however, that public recreation is one of the beneficial uses of Mission Bay Park. The portion of Fiesta Island littered with fireworks debris is designated to become improved public parkland with picnic and play areas, and is planned to be used for group activities, company picnics, family reunions, etc. While the unimproved area is currently used mostly by joggers and persons walking their dogs, in the future, a much more intense public use of this area is expected. The litter caused by firework debris could diminish public enjoyment of this area, and/or cause the City additional expense for trash removal; in either case, the presence of firework debris could have an adverse impact on public access and recreation in addition to possible environmental impacts.

The Commission finds the various reports, along with the on-site staff inspection, inconclusive. While none of these studies showed a clear link between fireworks and degraded air, land or water quality, the general consensus seemed to be that more study is needed. This uncertainty causes the Commission to find the current proposal, which does not impose time limits and does not require additional studies, is inconsistent with the cited Coastal Act policies.

Another reason the Commission finds the submitted LUP amendment inconsistent with the Coastal Act’s water quality policies is that the certified Mission Bay Park Master Plan, approved in 1995, does not contain the level of detail addressing water quality issues typically seen in more recent LCP land use plans. As currently certified, the plan provides only generalized guidance on water quality issues, while water quality is recognized as the most significant problem facing this LCP segment. The proposed development at SeaWorld and associated improvements elsewhere in Mission Bay Park have the potential to increase the amount of polluted runoff entering Mission Bay, which is already designated an impaired water body by the RWQCB. Moreover, contamination often closes the public beaches, resulting in many days per year where public recreational opportunities are denied. The LUP amendment does not provide adequate standards to ensure that development associated with SeaWorld avoids additional adverse effects to water quality. The LUP amendment as submitted is therefore inconsistent with Sections 30230 and 30231 of the Coastal Act.

**4. Traffic and Circulation/Parking.** The following Chapter 3 policy of the Coastal Act is most applicable to the proposed LCP amendments, and states in part:

**Section 30252.**

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, ... (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings ....

The proposed Mission Bay Park Master Plan amendments and SeaWorld Master Plan Update include a number of good policies addressing traffic issues, and include a range of mitigation measures to be implemented in the future based on attendance counts. In particular, the certified EIR for the SeaWorld Master Plan identifies the need for widening Sea World Drive and the West Mission Bay Drive bridge, interchange improvements at I-5/Sea World Drive and I-5/I-8, the construction of a parking garage, and accommodations for improved public transportation service. SeaWorld would provide a fair-share portion of the cost of road and highway improvements, but would have sole financial responsibility for the parking garage and on-site transit improvements.

The EIR and Master Plan documents, however, do not identify that any of these improvements are necessary to mitigate for the impacts of Tier 1 projects. All mitigations are associated with Tier 2 and Special Project developments, which are expected to bring SeaWorld attendance to significantly increased levels. Attendance itself is the final determining factor of when improvements are necessary, and SeaWorld must monitor attendance annually for that reason. None of these facilities are anticipated for a number of years (if ever, depending on market trends) so there is doubt as to whether the identified traffic improvements will ever occur. Moreover, since SeaWorld is only a fair-share contributor for the road improvements, these will never be implemented if additional funding is not acquired from other sources.

The I-5/Sea World Drive interchange currently operates at LOS "E." The environmental review attributes this more to summer weekday commuter traffic than to recreational park users. However, the highest weekday peak occurs in the late afternoon, when the recreational and commuter peaks coincide. Anecdotal information indicates that summer Sundays are particularly frustrating for the beach-going public due to traffic congestion attributed mostly to SeaWorld visitors. This situation improved somewhat about ten years ago when SeaWorld relocated their front gate and parking lot entrance. However, since the proposed development at SeaWorld is intended to increase attendance, and increases in regional population are expected to increase beach and park visitorship, the weekend situation can be expected to worsen in the future as it has done gradually over the past ten years.

Caltrans suggests a valuable improvement to area traffic circulation would be to complete the I-5/I-8 interchange. There are currently no connectors from eastbound I-8 to

northbound I-5, nor are there connectors from southbound I-5 to westbound I-8. Much commuter traffic uses Sea World Drive only because the more convenient freeway-to-freeway connections cannot be made at the I-5/I-8 interchange. Thus, weekday traffic loads on Sea World Drive and at the I-5/Sea World Drive interchange would lessen substantially if the missing ramps were added at the I-5/I-8 interchange. These ramp additions, particularly the southbound I-5 to westbound I-8 connection, would also significantly reduce the use of Sea World Drive for recreational traffic, as this connection would make the western portions of Mission Bay Park, along with the beach communities easily accessible from the freeway, without having to rely on the surface street system within the park.

However, these improvements are not even identified as potential mitigation projects for SeaWorld for a number of reasons: the indirect relationship between the SeaWorld Master Plan and improvements at the I-5/I-8 interchange; the cost is prohibitive for a single funding source; no public monies are available; the improvements would have to be coordinated through Caltrans alone, since this would not involve any city streets; and the conditions are not at a critical point to demand action. Without these freeway to freeway connections, the next best way to alleviate the current congestion is to make improvements at the I-5/Sea World Drive interchange. Improvements at this location are identified in the EIR as one of the traffic mitigations for SeaWorld. These improvements would not be done for several years, however, since the EIR attributes the current LOS "E" to commuters, not to SeaWorld. The document indicates that SeaWorld would not be directly responsible for congestion in this location until it experiences a significant increase in attendance.

SeaWorld plays at least a cumulative role in this situation, especially since weekday commuter peaks coincide with recreational traffic peaks in the late afternoon hours. The afternoon commuter peak is identified as 5:00 – 5:30 p.m., and the recreational peak is 5:00-7:00 p.m. The main problem occurs on northbound I-5, when commuters leaving downtown mingle with SeaWorld visitors heading home. Nonetheless, the EIR identified that short term traffic mitigations association with Tier 1 development at SeaWorld included widening Sea World Drive to 6 lanes, constructing a 400-foot extension of the eastbound right-turn lane on Sea World Drive at southbound I-5, and making several operational adjustments on Perez Cove Away to provide better flow for those entering SeaWorld.

SeaWorld has indicated it would prefer to contribute its fair share for the Sea World Drive widening to a city Capital Improvements Project (CIP), instead of constructing the improvements itself. This would allow the City to use the money to make the interchange improvements at Sea World Drive/I-5, which is a much more needed improvement from a regional perspective. The problem the Commission sees with this is that other fair share contributors are also needed for those improvements to be realized, such that complete funding may never be achieved.

Likewise, the other circulation/parking improvements identified in the EIR may never occur. Attendance monitoring will determine when the future parking garage needs to be built. The traffic study estimates this will occur in approximately 2011. The proposed plan fails to consider, however, that several identified projects will reduce the current level of public parking at SeaWorld. The Tier 1 educational facility will occupy portions of the existing main parking lot, usurping approximately 55 existing parking spaces. The Tier 2 area identified as I-2, includes 8 acres of land currently used for both formal and informal parking (approximately 1,200 spaces), and construction of the Special Project future hotel will remove current employee parking (approximately 650 spaces). It should also be noted that the potential future four-level parking garage is proposed to be built within the existing parking area. Thus, the actual parking gain must be reduced by the amount of parking lost to the garage itself and its approaches.

The plan does include the improvement of parking in a portion of the 16.5-acre expansion area (the 10-acre portion above the landfill, where most other uses are prohibited; this is expected to accommodate 1,500 spaces). However, SeaWorld is already using this area, in its unimproved state, for overflow parking on its busiest days. Formalizing the use of this area through surfacing and striping may result in some additional parking spaces over the current informal use, but it seems unlikely this would adequately mitigate for the parking losses identified above, let alone increase the parking supply to address future demand.

Lastly, the proposed master plan identifies future transit improvements to increase the use of public transportation for visitors to SeaWorld, Mission Bay Park in general, and the ocean beaches to the west. There is conceptual planning underway to extend a people-moving system from the existing Old Town trolley station, through Mission Bay Park and on to the beach communities. It is expected that any such proposal would include a stop at SeaWorld, and the SeaWorld Master Plan commits to providing a transit station within the future parking garage, providing the garage is built. However, the plan does not include any form of incentives to increase the use of public transportation, even though SeaWorld is currently on two bus routes.

The single biggest concern the Commission has with regard to all the traffic/parking issues, is the inability to guarantee that any of these traffic improvements will ever occur. Having one donor supply a share of the funding cannot guarantee that the improvements will certainly occur. Since most of the really critical traffic improvements are fair-share funded, SeaWorld's impacts could remain unmitigated forever if other projects in the area do not move forward. Likewise, SeaWorld's attendance may never reach the level to require the parking garage, yet the identified projects which will reduce on-site parking may go forward unmitigated. Finally, the suggested transit facilities are reliant on a large infusion of public money, and may thus never happen. The Commission finds that, as only partially mitigated in the SeaWorld Master Plan, traffic impacts associated with the anticipated development at SeaWorld are inconsistent with Chapter 3 public access policies, and with the overall goals and policies of the certified Mission Bay Park Master Plan. Additionally, the plan lacks sufficient policy direction to assure necessary

improvements to the circulation infrastructure will be funded and completed prior to the impacts associated with increase in intensity of use will occur.

**PART V. FINDINGS FOR APPROVAL OF THE MISSION BAY LAND USE PLAN, IF MODIFIED**

**A. SUMMARY FINDING/CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2(b) of the Coastal Act, that the land use plan amendment, as set forth in the resolution for certification as submitted, is not consistent with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act. Section 30001.5 is recited above in this report.

**B. SPECIFIC FINDINGS FOR APPROVAL, IF MODIFIED**

Although both the Mission Bay Park Master Plan and the SeaWorld Master Plan Update contain good policies for resource and access protection, there are areas where both plans need improvement/strengthening before they can be found fully consistent with the Coastal Act. The Commission has included a number of suggested modifications intended to bring about this conformity and to guide the City in future planning decisions for this significant regional public recreational resource.

Detailed findings addressing the four specific issue groups identified in the previous findings for denial follow.

**1. Public Access and Recreation.** The City's proposed LCP amendment modifies several sections in the certified Mission Bay Park Master Plan/LCP Land Use Plan (LUP), as well as adding the new SeaWorld Master Plan Update as a component of the LUP. Several aspects of the proposed amendment address public access and public recreational opportunities. As a whole, the proposed LUP amendments will affect public access both positively and negatively. Negative impacts on public access and recreation were addressed in the previous set of findings for denial of the LUP, as submitted.

On the positive side, the plan requires the widening and improvement of the existing bicycle/pedestrian path which currently runs around the inland perimeter of the SeaWorld leasehold. As approved by the City Council, the plan requires widening the existing 10-foot wide paved pathway, which follows SeaWorld Drive and Perez Cove Way for the most part, to 17 feet of path with a four to ten-foot landscape strip separating bicycle and foot traffic wherever possible. This would bring the path into compliance with current Mission Bay Park standards. In addition, the plan requires clear and adequate signage identifying the path as a public amenity.

Another public access benefit gained through the City's approval of the Master Plan is the off-site improvement of some of the missing segments of the existing shoreline access path around Mission Bay. These improvements total approximately 4,700 linear feet of 10-foot wide pathway, located between SeaWorld and the Fiesta Island causeway, where the current path is discontinuous in places. As approved by the City, this improvement is required to be in place by the end of 2002.

Negative impacts of the proposed LCP amendments were addressed in detail in the previous set of findings for denial. Briefly, they include the direct loss of public parkland, failure to provide adequate shoreline setbacks for public access and the need to prioritize public recreational improvements over commercial development and leasehold expansion within Mission Bay Park. The Commission is suggesting a number of modifications to bring the Mission Bay Park Master Plan and SeaWorld Master Plan Update into conformance with Chapter 3 policies of the Coastal Act. Suggested Modifications #3, 8, 9, 10, 11, 15, 21, 30, and 32 all address various aspects of public access and recreation. The first five are directed to the certified Mission Bay Park Master Plan, and modify its policies with respect to priorities in park development, expand potential funding sources, require the City to prepare a CIP addressing public improvements to South Shores and Fiesta Island within two years of effective certification, provide for adequate shoreline setbacks and require construction of pedestrian promenade improvements. The other four access-related suggested modifications address the SeaWorld Master Plan Update, and identify appropriate uses of public parkland, especially use of the 16.5-acre expansion area, provision of a public promenade at South Shores, and setback requirements to provide public shoreline access.

Since approval of the Mission Bay Park Master Plan in 1995, which identified the South Shores public park improvements as a high priority item that could be completed right away, a few commercial additions/expansions have occurred, yet many of the South Shores improvements remain unbuilt. The City has provided additional information which includes a list of public improvements that have benefited Mission Bay Park from 1990-2001 (ref. attached to City of San Diego letter dated February 1, 2002). The City indicates that of the \$529,590,324 spent, \$15,600,000 has been spent specifically on South Shores and Fiesta Island. In the submittal, there are two entries for South Shores Phase I and Phase II which include \$3,020,272 and \$3,510,683 for development of South Shores Phase I (1987-90) and Phase II (1991-95) respectively. The description for both entries is the same and includes "a small bay with shore protection, a boat launch ramp, a boat slip, a parking lot, an access road, signage and comfort station. The bay was constructed to mitigate the loss of embayment in Sail Bay due to the construction of a widened beach." The submittal indicates Phase III improvements (\$4,103,553) occurred in 1995-97 and included boat docks, a parking lot, access road, signage and related landscaping. The South Shores Lagoon Picnic Shelter was constructed with \$100,000 of sludge monies in 1997-2001. Finally, there is an entry entitled South Shores Park-Requirements for \$2,200,000 from 1992-ongoing, which indicates it will provide for the "additional development of South Shores Park. The Park is a 102 acre parcel located in South Mission Bay Park. 25 acres are being developed in FY 1988. This project will provide improvement of the additional acreage including parking, turf, comfort stations,

picnic facilities, sidewalk/bike trails, street improvements on Sea World Drive, an extension of water and sewer and electric services into the park.” It appears this appropriation funded preliminary work on South Shores Phase IV; however, the City has indicated that South Shores Phase IV is not currently funded.

The list of improvements submitted by the City include a number of sewer and water infrastructure improvements which the Commission concurs are necessary and important to improve the water quality in Mission Bay. The Commission notes the majority of the park-related public improvements that have been made in the park are relatively small projects constructed with sludge mitigation monies. A brief history of the establishment of the sludge mitigation fund will follow.

In 1981, the Coastal Commission approved an expansion of the existing sludge drying facility on Fiesta Island which was identified as a temporary use and predated the Commission. Recognizing, however, that this was not an appropriate permanent use of public park lands, the Commission conditioned its approval of the expansion, requiring that the entire facility be relocated out of Mission Bay Park by January 1, 1987, a date which proved unworkable. A series of amendment requests were approved by the Commission to allow continuation of the sludge-drying operation until a permanent location/facility could be reviewed, permitted and constructed.

In 1989, the Commission instituted a \$1,000,000 per year mitigation fund to offset the public’s ongoing loss of recreational opportunities and restricted access during the remaining time the facilities had to remain on Fiesta Island. Half of the fund was to be reserved for master planning of Fiesta Island and funding of improvements in the area of the former sludge beds, and the rest was designated for public access and recreation projects in Mission Bay Park. In time, the mitigation fund increased to \$2,000,000, then dropped back to \$1,500,000. In all cases, \$500,000 annually was placed in the Fiesta Island Reserve Fund, amounting to approximately \$4,000,000 when the sludge beds were removed and the program stopped. After a couple expenditures for related projects, the fund currently has approximately \$3,800,000 available to plan and implement Fiesta Island public improvements. There also remains several hundred thousand in interest earnings, yet to be allocated to anything. Since the sludge facilities moved out, the Fiesta Island facility has been demolished, the site has been hydroseeded, and there is limited pedestrian access providing passive recreational uses at the site.

The City staff has indicated there are two draft Capital Improvement Programs pending to address the first phase of development of the area on Fiesta Island previously occupied by the sludge beds, and for expenditure of the \$3.8 million. As the CIPs are in draft form, the City has not confirmed the status of these programs or submitted an estimated timeline for completion of initial improvements on Fiesta Island. Currently, the area is useable by the public in its unimproved condition; however, due to the lack of restroom facilities (two chemical toilets serve this area of the island) and infrastructure improvements, the area is significantly underutilized, especially for an area designated to accommodate the bulk of the increase in public recreational demand for Mission Bay Park. Additionally, the abandoned sludge bed area is surrounded by a chain link fence



with barbed wire at the top. There are five gate enclosures that are uninviting in design. The City has indicated the purpose of the fencing is to keep vehicles out of the area. It would appear a portion of the reserved \$3.8 million could go toward measures to increase the public use of the area until more permanent infrastructure can be completed.

The Commission has concerns over the implementation of many identified public access protections and improvements in light of the costs involved and the economic situation within the tourism industry. Additionally, the policy language in the LCP amendment, as submitted, fails to include in the Mission Bay Park Master Plan adequate implementation measures and funding mechanisms to assure completion of identified regional park improvements on South Shores and Fiesta Island concurrent with expansion of the SeaWorld leasehold or any other expanded commercial development in Mission Bay Park. Yet, such private commercial development has a cumulative impact on traffic and circulation within the park and occupies land area otherwise available for lower cost visitor and recreational facilities.

The Commission's suggested modification to the policy language indicates that completion of the planned public improvements within South Shores and Fiesta Island must be given a higher priority. The policy language in Suggested Modifications #3, 10 and 11 requires the City to submit a Capital Improvement Program (CIP) within two years of effective certification of this amendment which addresses the development of significant public recreational facilities at Fiesta Island and South Shores. The CIP must specifically address funding priorities, secure funding sources and develop a timeline for completion of the necessary infrastructure improvements and subsequent buildout of planned facilities for South Shores and Fiesta Island. The CIP should also include use of the \$3.8 million mitigation funds and a phasing component in order to assure the public recreational improvements will be developed commensurate with new commercial development approved in the Park. In other words, significant expansion of existing or new commercial development should not occur without completion of a significant amount of infrastructure and public recreational improvements within South Shores or Fiesta Island. Policy language in Suggested Modification #10 specifies the use of developer fees as a means to assure a corresponding build-out of public recreational improvements occurs with commercial development approval, to mitigate the increasing public burdens to Mission Bay Park brought about by commercial redevelopment, intensification and expansion.

Thus, the modified policy language will assure that lower cost recreational facilities are prioritized. All commercial development within Mission Bay Park, including SeaWorld and the hotels, are high cost and not affordable to a large segment of the general public. Regional parkland, such as that planned for South Shores and Fiesta Island serve a significantly greater segment of the population free of charge. The intent of the suggested language is to assure that significant commercial development in Mission Bay Park only proceeds commensurate with equitable public improvements identified in the plan.

With regard to the SeaWorld leasehold, the Commission's suggested modifications relating to provision of public recreational improvements would affect any development proposed on the 16.5 acre expansion area, i.e. the Special Event Center and the parking above the 10 acre landfill. The suggested modifications include a public access improvement, the waterfront promenade on South Shores Park which, if constructed by SeaWorld, would serve to offset in part the ongoing access constraints on lower cost visitor and recreational facilities in Mission Bay Park, which will be exacerbated by the proposed Tier 1 projects, and would allow all Tier 1 development to move forward. However, to construct the waterfront promenade in the location shown in the certified plan would require the dredging of an 8 acre embayment to widen Pacific Passage as a personal watercraft area. Neither the Commission nor the City is suggesting that the dredging be undertaken at this time for several reasons: 1) potential environmental impacts of such dredging have not been identified; 2) there is serious doubt that the dredging, identified as a way to expand personal watercraft area in the bay, could be considered an allowable use in wetlands; and 3) recreational priorities have changed since 1994, when the Mission Bay Park Master Plan was drafted. The Commission concurs that expenditure of a large amount of money on what might be temporary improvements is not reasonable. Moreover, the Commission does not want the location of the bikeway and promenade to be dependent on construction of the embayment.

There is an existing asphalt path from SeaWorld to the Fiesta Island Causeway, utilized by both bikers and pedestrians, which already provides access inland from the water's edge. Support facilities such as landscaping, shade structures, picnic tables, benches, trash cans, etc. are the type of public improvements lacking in the area. This situation suggests that funding priorities for completion of South Shores Park have not been adequately established by the City and that park development is not moving toward completion in accordance with the plan. The Commission finds completion of the waterfront promenade would be an important first step by the City and SeaWorld toward completion of South Shores Park. The construction of the waterfront promenade will offset the impacts to public access associated with expansion of the SeaWorld leasehold in an area otherwise available to provide lower cost visitor and recreational facilities and will assure completion of a significant component of the planned South Shores park development commensurate with Tier 1 expansion plans. Therefore, the Commission finds these modifications are the minimum necessary to respond to known public needs, especially the need for additional low-cost public improvements. Areas of Mission Bay Park, in particular South Shores and Fiesta Island, are currently underutilized because they lack basic infrastructure, such as electricity, water, and sewer improvements, as well as conveniences like restrooms, picnic tables, benches, etc. As other commercial leaseholds in the park come forward to expand or significantly redevelop, assurance of completion of similar public improvements should accompany requests for permits or LCP amendments. The suggested modifications make both planning documents fully consistent with the Coastal Act's requirements for the protection and enhancement of public access and recreational opportunities.

**2. Visual Resources.** As stated previously, Mission Bay Park is recognized nationally as a public resource providing a wide variety of passive and active recreational

opportunities in a unique, visually-pleasing setting of rolling grassy areas, sandy beach and open water. The commercial leaseholds are scattered throughout the park and include high-rise structures at four hotel sites, as well as the observation tower and gondola ride at SeaWorld. These few structures all predate the Coastal Act and the City's coastal zone height initiative which established a limit of 30 feet. No permanent structural improvements exceeding 30 feet in height have been approved anywhere in Mission Bay Park since passage of the Coastal Act and City height initiative.

In 1998, SeaWorld secured passage of a new height initiative, exempting itself from the 30-foot limit. Following this, SeaWorld developed the subject master plan, to establish development sites and design criteria for future buildout of the park, and redevelopment of existing areas. The initiative made it clear that additional heights could be proposed within the SeaWorld leasehold, but the City Council and Coastal Commission would decide whether or not to approve the specific proposals. The currently developed portions of SeaWorld (Area 1, without the new expansion, as depicted in Figure II-2, attached) are heavily landscaped with a variety of mature trees, shrubs and groundcovers. Many existing trees are 60-80 feet tall and effectively screen the interior of the park to views from outside SeaWorld. In addition, the existing landforms and development in this area obscure any view of Mission Bay across the historic leasehold itself. Therefore, some taller elements in this area may be found consistent with Sections 30240 and 30251, cited earlier in this report, depending on their exact location and design.

The Commission finds the height allocations identified in the SeaWorld Master Plan could result in massive changes to the character of Mission Bay, and that it is premature to set specific height allocations for future development. Establishing such allocations at this point could lead to unrealistic expectations on the part of SeaWorld, and could be interpreted as Commission endorsement of said allocations. Exhibit #5, attached, gives conceptual images (photosimulations) of potential maximum site buildout as seen from several public vantage points outside SeaWorld; this information is from the certified EIR for the SeaWorld Master Plan Update. A Thomas Guide excerpt is also located to identify the areas where the pictures were taken and simulations drawn. It can be seen from this exhibit that full buildout utilizing SeaWorld's proposed height allocation table would significantly impact the visual resources of Mission Bay as seen from nearby points and from those more distant.

The appropriate height of any proposed structure should be thoroughly analyzed during the site-specific project review and public hearing process for that particular development taking into consideration the specific design details, siting, scale and bulk of the proposed development, the nature of surrounding development, and the potential for cumulative impacts from additional future development. The Commission believes the LCP amendment process allows for the most comprehensive review of the impacts of Tier 2 development, if all of the proposed development is submitted at one time. However, SeaWorld may choose to proceed with Tier 2 development on a project by project basis, and, since Chapter 3 policies of the Coastal Act remain the standard of review as long as the LCP is not certified, it is difficult to require an LCP amendment for an individual project. Therefore, the Commission is willing to delete the requirement for an LCP

amendment, but only if the height allocations are also deleted, so there is no expectation that the impacts of potential Tier 2 development have been reviewed on a comprehensive basis.

Suggested Modifications #1, 2, 5, 6, 13, 14, 18, 19, 20, 26, 27, 28, 29, 30, 32, and 34 are found necessary to bring both the Mission Bay Park Master Plan and the SeaWorld Master Plan Update into conformance with the cited Chapter 3 policies of the Coastal Act. The first four suggested modifications address the Mission Bay Park Master Plan and clarify the Commission's interpretation of the SeaWorld height initiative, future design options for the expansion area in keeping with its location in a transition area between open public park and SeaWorld, and a discussion of procedural issues.

The remaining suggested modifications all address the SeaWorld Master Plan Update. Suggested Modifications #13, 18, 19, 20 and 29 all address the location and design of the proposed Splashdown Ride. The master plan identifies a site partly within the expansion area and partly within existing facilities, and the highly visible attraction is proposed approximately 25 feet from the shoreline. In response to the Commission staff's concerns, SeaWorld has proposed an acceptable site for the ride by switching its location with the location shown in the master plan for the special events facility and other, as yet unknown (i.e., Tier 2), improvements. The alternative site for the 95-foot-tall splashdown ride is located within the developed area of the park close by the main parking lot, and is thus far less visible from adjacent areas in Mission Bay Park, and surrounding communities as well, than the perimeter, shoreline site shown in the master plan. Moreover, the special events facility is identified in the master plan as a structure of significantly lower height that would be more acceptable in an area immediately adjacent to public park facilities, including future passive picnic and walking areas as well as existing boating facilities. Both projects will come before the Commission in the future through coastal development permit applications, so the Commission can analyze specific designs and heights at that time to assure consistence with Section 30251 of the Coastal Act.

Suggested Modification #14 addresses the level of review required for all proposed development exceeding 30 feet in height and simply clarifies the need for a coastal development permit. Modifications #26 and 30 address shoreline setbacks, to assure that all new development, including redevelopment of previously developed areas, complies with the intent of the setbacks established in the Mission Bay Park Master Plan to open up the waterfront for passive enjoyment.

SeaWorld has requested two exceptions to the setback requirements in Area 1 to allow retention of a waterfront stadium and construction of a new restaurant. The Commission finds the exception for the renovation of the existing waterfront stadium is appropriate and Suggested Modification #30 has been adjusted to reflect this exception. However, the Commission finds that an exception for a new restaurant is not appropriate, as it would set an adverse precedent for SeaWorld itself and all other commercial leaseholds in Mission Bay Park, several of which are anticipated to be proposing new restaurants. Since nothing can be built within the public use area in any case, restaurant patrons will

have an unobstructed view of the Bay, even if they are not at the immediate shoreline. The intent of the setback is to provide adequate shoreline access for the general public on public parkland; however, in SeaWorld's case, it is for the public within the leasehold. An additional reason for the 75 foot setback is to reduce the visibility of structures from views from the water and other areas of Mission Bay Park.

SeaWorld has also requested exceptions from the bulk/plane setback provisions for Areas 4 and 5, which are the proposed locations for marina expansion and hotel construction, two of the identified future special projects. The Commission finds the exception for the marina expansion is appropriate and Suggested Modification #30 reflects this exception. The Commission does not see a need for an exception for the hotel, since, pursuant to action by the City Council, this facility is limited to a maximum height of 30 feet. However, because of the way SeaWorld's suggested language is worded, the request is actually for an exception to the shoreline setback, not the bulk/plane setback, due to geographic constraints of the specific site. The Commission finds no reason to treat the SeaWorld leasehold differently than other Mission Bay leaseholds; this is not the only narrow peninsula in the park. The Commission finds that the policy allowing averaging of the setback beyond 50 feet adequate to address this situation.

Modifications #27, 28 and 34 delete the specific height allocations proposed in the master plan as it may be determined, upon site-specific analysis of projects proposed in the future, that these allocations are too generous. The Commission finds that assigning specific maximum height allocations can be misinterpreted as acceptance of this full level of build-out. Finally, Suggested Modification #32 discusses the role of the expansion area as a transition from public open park to private theme park. With these modifications, the plan will include appropriate siting and design criteria to protect existing visual resources, and is thus consistent with the cited Coastal Act policies.

**3. Water Quality.** As with all structural development in Mission Bay Park, SeaWorld contributes stormwater runoff into the bay. In addition, SeaWorld uses sea water for its aquariums and show tanks, and circulates this water to and from the bay continually. To address these concerns, SeaWorld has constructed two on-site treatment facilities. Although designed primarily for the treatment of used aquarium water, these facilities also treat about 25% of SeaWorld's surface runoff from the improved parking lots before it is discharged into Mission Bay. The remainder of the parking lot runoff enters the City's municipal storm drain system, but it is expected that, through redevelopment, virtually all runoff generated at SeaWorld will eventually be directed through its existing treatment facilities, which have excess capacity capable of treating increased loads.

In addition, SeaWorld has a Best Management Practices (BMP) program in place to control non-point sources of pollution during its day-to-day operations. The Commission's Water Quality Unit has reviewed SeaWorld's treatment facilities and BMP Program and determined that these are adequate to address existing development and the Tier 1 projects described in the Master Plan. This BMP program, however, has not been

incorporated into the Master Plan, and would more typically be addressed in future coastal development permit reviews.

The public raised a concern as to whether SeaWorld's fireworks displays adversely affect land, air or water resources, and there is little data available to either confirm or deny these concerns. Displays are held nightly between Memorial Day and Labor Day and intermittently throughout the remainder of the year to celebrate holidays and special events with an average of between 110-120 fireworks displays a year. The master plan had proposed a significant increase in the number of annual displays, but the City's approval placed the limit at 150 per year, which represents a small increase over what occurs now. However, at present, there is no established limit, and fireworks could occur 365 days a year if it were economically feasible. Three reports on fireworks impacts were submitted for staff review. The reports are inconclusive and somewhat contradictory, but express a need for more information.

Therefore, the Commission finds it appropriate that the City has placed a limit on the number of annual fireworks displays. Moreover, the Commission finds additional testing is necessary before any final decisions are made as to whether or not this is an appropriate venue for such displays. Suggested Modifications # 24 and 25 address the fireworks issue. They require a five-year monitoring of the fireworks shows and formalize a program to be used during this period. After five years, all test results will be reviewed by the Commission staff, the Regional Water Quality Control Board, National Marine Fisheries Service, U. S. Fish and Wildlife Service, and the California Department of Fish and Game, in a coordinated effort to reach scientific conclusions. A report will be brought forward to the Commission identifying all documented impacts and their significance, along with a recommendation on whether fireworks displays should continue. If no adverse impacts are identified, the fireworks displays may continue. If adverse impacts are identified, the City and SeaWorld must initiate an LCP amendment to determine under what conditions fireworks displays may be allowed to continue. The Commission has augmented the proposed monitoring plan by requiring more frequent testing during the initial year of the program. It has also required one additional test site to study any potential adverse effects of fireworks on the ocean itself; the test site is to be located at the mouth of the Mission Bay Channel, where it empties into the Pacific Ocean. In addition, Suggested Modification #36 establishes that the leaseholder is responsible for the provision, operation and maintenance of all water quality devices and BMPs.

These prior modifications all address the SeaWorld Master Plan Update. Suggested Modification #12 represents the Commission's current direction in matters of water quality. This will modify the Mission Bay Park Master Plan to significantly expand its existing water quality component. As certified in 1995, the master plan includes some general water quality goals and identifies several potential projects to improve the waters of Mission Bay. Since 1995, there has been an increase in knowledge about these matters, additional limitations have been placed on chemical loading of water bodies, and significant technological advances have occurred. The proposed development at SeaWorld and associated improvements elsewhere in Mission Bay Park have the

potential to significantly increase the amount of polluted runoff entering Mission Bay. Although SeaWorld has established an adequate BMP program, that program is not part of the SeaWorld Master Plan and does not apply to improvements that will be required elsewhere in Mission Bay Park pursuant to this LCP amendment. Suggested Modification #12 is therefore necessary to ensure that future development is designed and maintained to avoid adverse impacts to the water quality of Mission Bay, as required by Sections 30230 and 30231 of the Coastal Act.

A portion of the eastern Sea World leasehold is underlain by the inactive Mission Bay Landfill. The City of San Diego operated the landfill from approximately 1952 until 1959. The landfill reportedly accepted municipal solid waste and some liquid industrial wastes (including acids, alkaline solutions, solvents and paint wastes). The U.S. Environmental Protection Agency estimates that up to 737,000 gallons of industrial wastes may have been disposed at the landfill during its operation. After closure of the landfill, dredged material from Mission Bay (consisting of mostly fine-grained material) was placed on top of the former landfill surface to a depth of approximately 15 feet. A portion of the site is currently paved with a chip-seal paving surface which allows for diffusion of landfill gasses while remaining impervious to water infiltration.

Several investigations of the landfill were conducted to evaluate the extent of potential chemical contamination. Samples for chemical analysis were collected from soils, surface water, sediments and groundwater from the landfill and surrounding areas. Investigations detected a number of chemicals in onsite soils and groundwater including heavy metals, volatile and semi-volatile organic compounds and chlorinated pesticides. In 1985, the Regional Water Quality Control Board (RWQCB) adopted Order No. 85-78, which required, among other things, routine monitoring of groundwater, surface water and sediments from Mission Bay and the San Diego River. In addition to routine monitoring, several additional soil and groundwater investigations were conducted in and around the landfill through 1997. The results of these investigations and continued routine monitoring indicate that low levels of chemicals were detected in soils and groundwater beneath and adjacent to the landfill. According to the RWQCB, these low levels of chemicals do not represent a significant threat to public health or the environment. Furthermore, the California Department of Toxic Substances Control (DTSC) and U.S. EPA previously evaluated the site in 1987 and 1993, respectively, and determined that the site did not pose a significant threat (See attached letters from the DTSC and RWQCB).

The RWQCB continues to be the lead agency for oversight for water quality issues at the Mission Bay Landfill. The City of San Diego continues to monitor the site in accordance with RWQCB Order 97-11, General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Nonhazardous Waste Landfills. Routine monitoring has detected low levels of several chemical constituents in groundwater beneath and adjacent to the site. However, the concentrations of these chemicals have been well below any of the established action levels identified by the RWQCB, and do not appear to represent a significant threat to public health or the environment. The site is currently in compliance

with the requirements of the City of San Diego Solid Waste, the RWQCB, and California Integrated Waste Management Board.

Commission staff has received public comments related to the presence of contaminants in groundwater beneath the landfill and the potential for migration of these chemicals offsite. The Commission's Water Quality staff has reviewed the available monitoring data regarding groundwater conditions at the Mission Bay Landfill. Staff concludes that data supports the determinations by the regulatory agencies overseeing the landfill that the low levels of chemicals detected do not represent a significant threat to public health or the environment. The same public comments were submitted during the comment period for the *Draft Environmental Impact Report for the Proposed Sea World Master Plan Update (EIR)*, dated March 12, 2001. These comments and related issues were fully and adequately analyzed by the lead agency in the Final EIR.

The data submitted most recently does not relate to either Maximum Contaminant Levels (MCLs) or to the California Toxics Rule (CTR). Both of these regulations establish **water quality standards** for either sources of drinking water (MCLs) or Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California. The summary of the analytical results submitted on January 22, 2002 relates **soil** samples, not water samples and, therefore doesn't apply to either MCLs or the CTR. The data presented are insufficient to draw any conclusions about potential migration to surface or groundwater or about the levels which chemicals may be present in surface or groundwater. Furthermore, the concentrations detected are low, and not untypical of those found in background soils in urban areas. A comparison of those heavy metals and organic compounds detected in the soil samples to the U.S EPA Region 9's Preliminary Remediation Goals for either residential soils or soil screening levels for Migration to Ground Water, show they are substantially below (2 to 4 orders of magnitude) levels which would require action. Therefore, with the four suggested modifications discussed earlier in this finding, the Commission finds the LCP amendment consistent with the cited Coastal Act policies addressing water quality.

**4. Traffic/Circulation/Parking.** SeaWorld hosts nearly 4,000,000 visitors a year, with well over 100,000 people using Mission Bay Park on peak summer days. The vast majority of these people arrive via private automobile, and significant traffic impacts are occurring both inside and outside the park. Because of some missing connections on the nearby freeways, the park is heavily used by commuters as well. For beach access reasons, the Commission is most concerned over traffic impacts occurring during the summer season, particularly on weekends.

Regarding the demand for regional parkland, the Mission Bay Park Master Plan Update states the following:

“Consisting of mostly sandy beaches backed by ornamental turf, vegetation, and support parking, the regional parkland areas of Mission Bay Park are the recipient of intensive, region-wide, land-based recreation. Picnicking, kite flying, Frisbee tossing, informal sports, walking, jogging, bicycling, and skating are typical



activities in the Park's regional parkland. In consideration of an anticipated 50 percent increase in the county's population over the next 20 or so years, an equivalent increase in the amount of regional parkland area has been targeted for the Park to meet future recreational demands."

The areas targeted within the plan to meet future recreational demand for the lower cost visitor and recreational facilities available to the general public are South Shores and Fiesta Island. These two areas encompass 600 acres of the park and are currently undeveloped or underdeveloped and, thus, not available for the intense public use anticipated by the plan. The traffic and circulation improvements necessary to accommodate this projected increase in public recreational demand has not been determined. Additionally, completion of necessary infrastructure improvements is not assured. The Commission finds it is appropriate for the City to focus on the means to fund and complete substantial portions of the regional parkland and access and circulation improvements identified in the plan for these areas as a high priority. Development of these areas should proceed commensurate with further expansion of commercial development within the park.

The proposed Mission Bay Park Master Plan amendments and SeaWorld Master Plan Update include a number of good policies on traffic issues, and include a range of mitigation measures to be implemented in the future based on overall growth and attendance counts at SeaWorld. As discussed in the findings for denial, the major problem is not determining what improvements are needed, but prioritizing the improvements according to greatest need, and finding a means to fund and implement necessary improvements.

With respect to the proposed Tier 1 improvements, the necessary traffic improvements at the I-/SeaWorld Drive Interchange and the I-8/I-5 Interchange are not triggered by these improvements, but are tied to the results of the Mitigation, Monitoring and Reporting Program required by the EIR. The Caltrans Project Study Report will identify the phasing and funding of traffic improvements necessary to relieve congestion during peak summer recreational use and address the cumulative effects of increased population, commercial development and public recreational demand. Thus, the Commission supports the expenditure of the first mitigation monies toward completion of the Caltrans Project Study Report. It is SeaWorld's proposed Tier 2 development that may potentially be delayed if traffic mitigation is not guaranteed due to the status of Caltrans studies and project funding. This conclusion is drawn from the findings of the EIR for the SeaWorld Master Plan Update.

The project EIR identifies traffic impacts and recommended mitigation for 2005 and 2020, but indicates the measures should not be tied to a specific year but, instead, SeaWorld should implement a Mitigation, Monitoring and Reporting Program (MMRP) to identify when the impacts occur, due to the uncertainty of SeaWorld attendance. The EIR indicates there are significant impacts to the SeaWorld Drive and I-5 interchange for 2005 and 2020 that are considered unmitigated if full funding for the CIP is delayed or never achieved. SeaWorld's monetary obligation to the CIP is tied to the MMRP.

According to the EIR, when SeaWorld's project traffic exceeds the identified thresholds in the MMRP, SeaWorld will be responsible for its fair share contribution.

The Commission finds the EIR analysis suggests there is a potential for significant impacts to occur from SeaWorld and any commercial expansion within Mission Bay Park without the assurance that adequate traffic mitigation measures will ever occur. This uncertainty is not acceptable within a regional and statewide visitor destination center such as Mission Bay Park, or consistent with Sections 30210 and 30250 of the Coastal Act. The letter from Caltrans to Commission staff attached to the staff report addresses the status of the mentioned CIPs by the City to fund improvements to I-5/Sea World Drive and I-8/West Mission Bay Drive. Caltrans and the City are close to formalizing the establishment of the CIP for the I-5/SeaWorld Drive improvements. The letter also states that the SeaWorld Master Plan Update as approved by the City is not projected to have significant mainline impacts on north or south bound I-5 north of the interchange. It then says a Project Study Report and the necessary environmental documentation should be prepared for determination of the necessary traffic improvements associated with the Sea World expansion, and that the first funds will go to that study. In other words, regardless of the mitigation measures identified in the EIR, until a Project Study Report is complete, Caltrans will not be able to determine what traffic improvements are necessary and feasible. The letter also indicates the Project Study Report will be coordinated with the Central I-5 Corridor Study which is currently in process.

Finally, Sea World Drive/I-5 is currently at LOS E and West Mission Bay Drive/I-8 westbound ramp is at LOS F at PM peak hour. In 2020, without mitigation, they are both projected at LOS F; with mitigation, they achieve LOS E and D only if the CIP occurs. Thus, the Commission is suggesting policy language which will require consideration of the Project Study Reports for both I-5/I-8 interchange improvements and the SeaWorld Drive/I-5 interchange, prior to allowing substantial increases in commercial development within Mission Bay Park. Any substantial increase in commercial development will only exacerbate a currently unacceptable condition which has the potential to significantly impact the public's ability to gain access to Mission Bay Park and the coast.

Four Suggested Modifications addressing traffic matters are included in an attempt to help promote faster implementation of traffic improvements.. The first three, Modifications #7, 9 and 10, modify the certified Mission Bay Park Master Plan. They address needed freeway improvements, identify some potential funding mechanisms and require that the Caltrans Project Study Reports I-5/I-8 improvements and at the I-5/SeaWorld Drive Interchange be utilized as a factor in determining when expansion of commercial development and/or leaseholds may occur within Mission Bay Park in the future. These reports are necessary to determine the phasing and funding of improvements necessary to relieve congestion during peak summer recreational use and address the cumulative effects of increased commercial development, population and public recreational demand.

The revisions to Suggested Modification #7, as proposed by SeaWorld and the City, establish the exact amount of SeaWorld's share of traffic improvement monies, to be paid

in five annual installments. The Commission augmented this revision to require the first annual payment to be paid upon effective certification of the subject LCP amendment. It also added provisions for either a 3% annual increase, or an increase based on the Consumer Price Index, whichever is greater, to address increases in costs over the five-year payment period. The Commission finds the City's and SeaWorld's proposal to pay traffic mitigation funds sooner than required by the EIR will expedite completion of the Project Study Report and the identification and phasing of the necessary traffic mitigations. Additionally, such plan policies are necessary in order to prevent traffic congestion related to future development at SeaWorld from impeding the public's ability to get access to the coast, pursuant to Sections 30250 and 30252 of the Coastal Act.

Suggested Modification #35 is directed to the SeaWorld Master Plan Update and discusses the promotion of public transportation as a way to reduce traffic volumes on the street system. It includes an offer by SeaWorld to reduce the price of admission by \$5.00 to anyone showing proof of use of transit. It also identifies a number of other potential incentives, some already implemented and others to be implemented based on need. These include tram service for summertime weekends to transport people from the nearby trolley stations to SeaWorld, and additional financial incentives which might increase use of public transportation (buses and trolleys). Although both the Route 9 and Route 27 buses access SeaWorld, only Route 9 provides good service seven days a week (half-hourly runs dropping passengers directly at the gate). This route provides direct service from the Old Town Transit/Trolley Station. Route 27 runs along SeaWorld Drive Monday through Friday, providing a weekday connection to the Morena/Linda Vista Trolley Station. The route provides no service to SeaWorld at all on the weekends or holidays. Moreover, the bus stops are at the end of the SeaWorld exit driveway on SeaWorld Drive, which is a significant distance from the entrance gate. The Coaster commuter rail (between downtown and Oceanside) provides frequent weekday service and four trains on Saturdays, all stopping at the Old Town Station. However, there is no Sunday train service. Implementing a tram would encourage better ridership by recreational users. Other incentives suggested by SeaWorld are programs encouraging employee use of public transportation and advertising the availability of transit services in advertising brochures.

These required and optional measures will assure compliance with the requirements of Section 30252 of the Coastal Act to facilitate the provision of transit service, especially for high intensity uses such as SeaWorld. With the modifications, the Commission finds the planning documents consistent with the cited Coastal Act policies addressing traffic and parking issues.

**5. Future Development.** The terms "entitled" and "entitlements" may be misconstrued by the City or SeaWorld as an indication of Commission endorsement. Suggested Modifications #16, 17, 23, and 37 clarify this point. Although the Commission is not striking all reference to potential Tier 2 projects, Suggested Modifications #17 and 33 make it clear that no Tier 2 development is approved at this time. In the future, SeaWorld may submit all of Tier 2 development at once as an LCP amendment, or submit redevelopment one project at a time for permit review only.

Although it is understandable that SeaWorld would prefer to avoid the local discretionary process of LCP amendments, it may only be through such a comprehensive effort that the Commission can support any projects of greater height, scale and bulk than what currently exists in the leasehold. In any event, as long as Mission Bay Park remains an area of deferred certification, Chapter 3 of the Coastal Act will continue to be the legal standard of review and the Mission Bay Park Master Plan/LCP Land Use Plan, as amended herein, will be used as guidance.

Suggested Modification #22 clarifies that temporary facilities placed within the water area of Site F-2 are not exempt from permitting requirements and must be the subject of a site-specific biological analysis. Suggested Modification #31 clarifies that the issue of whether thrill rides may be counted as attractions containing a significant animal, education, or conservation element for purposes of meeting the City's 75% criteria will be addressed through lease negotiations between the City and SeaWorld, since no Coastal Act concerns are raised by this issue.

#### **PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. As discussed in previous findings, there are numerous suggested modifications to bring the Mission Bay Park Master Plan and SeaWorld Master Plan Update into conformity with the Coastal Act. They primarily address public access and recreation, visual resources, water quality and traffic issues. Thus, there are feasible alternatives or feasible mitigation measures proposed through these modifications which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan amendment, as modified, conforms with CEQA provisions.